

Review of the Operating Licence for State Water Corporation

Issues Paper

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

Review of the Operating Licence for State Water Corporation

Issues Paper

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1 INTRODUCTION

The Independent Pricing and Regulatory Tribunal of NSW (the Tribunal) is conducting a review of State Water Corporation's (State Water) Operating Licence, under section 30 of the *State Water Corporation Act 2004* (the Act). The objective of this review is to recommend the terms of State Water's Initial Operating Licence, as set out in the terms of reference provided by the Minister for Energy, Utilities and Sustainability (see Appendix 1).

State Water has recently been corporatised, and incorporates into a single business all of NSW's bulk water functions outside the areas of operation of the Sydney Catchment Authority, Sydney Water Corporation, Hunter Water Corporation and of a water supply authority (other than the area of operation of the Fish River water supply scheme). It currently operates under an Interim Operating Licence (see Appendix 2).¹ The Act provides for this Interim Licence to be in place for a period of up to one year, to provide a basic regulatory framework while the Initial Licence is developed and public consultation occurs. The Initial Licence is to have a maximum term of three years.

Please note that the Tribunal is concurrently conducting a review of the prices for rural bulk water services to apply from 1 July 2005. A separate issues paper is available for this review.

1.1 Review process

As part of the review process, the Tribunal will consult with key stakeholders, including State Water and environmental, community and water user advocacy organisations. It 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 relating to State Water's Initial Operating Licence. The Tribunal also plans to hold a public workshop to provide further opportunities for stakeholders to present their views. It will publicise arrangements for this workshop closer to the date.

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

Timetable for review

Action	Timeframe
Release issues paper	1 September 2004
Receive submission from State Water Corporation	15 October 2004
Receive public submissions	12 November 2004
Hold public workshop (in Sydney)	early December 2004
Present final report to Minister for Energy, Utilities and Sustainability	30 April 2005

¹ The interim licence was developed by the Department of Utilities, Energy and Sustainability and commenced on 1 July 2004.

1.2 Tribunal's considerations

In reviewing and recommending the terms of State Water's Initial Operating Licence, the Tribunal will consider any matters of relevance including all the submissions it receives and the matters set out in the Minister's Terms of Reference. For example, these terms require it to consider the objectives and functions of State Water, environmental performance, the regulatory environment and the financial management framework within which it operates.

1.3 Structure of this paper

To assist stakeholders in making submissions, this paper provides background information and outlines the key issues on which the Tribunal particularly seeks comments:

- Chapter 2 provides an overview of State Water, including its objectives, functions and areas of operation
- Chapter 3 describes the regulatory framework in which State Water operates
- Chapter 4 explains the role the Initial Operating Licence is intended to perform
- Chapter 5 outlines the system performance obligations that may be appropriate, including performance standards or indicators and asset management requirements
- Chapter 6 looks at the impact of State Water's operations on the environment and outlines the environmental obligations that may be appropriate
- Chapters 7 and 8 discuss customer service and community engagement obligations
- Chapter 9 outlines the role and purpose of the audit of the Operating Licence.

2 OVERVIEW OF STATE WATER — ITS OBJECTIVES, FUNCTIONS AND AREAS OF OPERATION

State Water was established as a stand-alone State Owned Corporation (SOC) on 1 July 2004, under the provisions of the *State Owned Corporations Act 1989*², by the *State Water Corporation Act 2004*. Prior to this, it operated as a commercial business within the former Department of Land and Water Conservation (DLWC).³ In April 2003, it was moved from DLWC to operate as a business unit within the Department of Energy, Utilities and Sustainability (DEUS).⁴

The key objective for corporatising State Water was to separate the Government's commercial water delivery functions from its policy and regulatory functions. This is in line with National Competition Policy requirements⁵, and should increase transparency and cost recovery in water delivery and resource management and reduce potential conflicts of interest.

State Water incorporates into a single business all of NSW's bulk water delivery functions outside of the areas of operation of the Sydney Catchment Authority, Sydney Water Corporation, Hunter Water Corporation and of a water supply authority (other than the area of operation of the Fish River water supply scheme). It owns 18 large dams and 1 small dam, and manages 11 small dams on behalf of Lands NSW. In addition, it owns more than 400 weirs. State Water provides water to irrigation corporations, country town water supply authorities, farms, mines and electricity generators, by releasing flows from its dams and using natural streams as the conduit. It also provides water for stock and domestic users and is responsible for delivering environmental flows on regulated rivers.

State Water's core business is providing services to about 6,200 customers who purchase water sourced from 'regulated rivers'.⁶ These services include providing water allocations from dams, billing and metering. The Department of Infrastructure, Planning and Natural Resources (DIPNR) is responsible for managing unregulated rivers and groundwater systems. However, State Water provides billing and metering services to DIPNR for around 15,000 groundwater and unregulated river customers. For the 2002/03 financial year, State Water's total revenue was \$69 million.⁷

² A corporatised entity remains in Government ownership and is accountable to its shareholder, the Government. It operates as a separate 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.

³ DLWC is now incorporated into the Department of Infrastructure, Planning and Natural Resources (DIPNR).

⁴ The aim of this transfer was to:

- separate conflicting regulatory and service provision objectives
- improve transparency, especially in relation to cost recovery
- remove any potential cross subsidies within DLWC; and
- meet National Competition Policy requirements (*Proposal for Comment – State Water Corporatisation*, DEUS, March 2004).

⁵ As a signatory to the National Competition Policy, the NSW Government is committed to implementing the Water Reform Framework, which was endorsed by the Council of Australian Governments (COAG) in 1994. The Framework requires the structural separation of water delivery functions from water resource management and regulation functions.

⁶ Regulated rivers are rivers where flows are regulated by dams or weirs as proclaimed by the New South Wales Government.

⁷ State Water, *Annual Report 2002 – 2003*, p 51.

From 1 January 2005, State Water will also operate the Fish River water supply scheme. The scheme provides bulk water services to a small number of customers including Oberon Council, Delta Electricity, Greater Lithgow City Council and Sydney Catchment Authority.

2.1 State Water’s objectives

The *State Water Corporation Act 2004* (the Act) establishes the objectives and functions of State Water. Under the Act, State Water’s principal objectives are **‘to capture, store, and release water in an efficient, effective, safe and financially responsible manner’**. Its other objectives under the Act are:

- to be a successful business and, to that end:
 - to operate at least as efficiently as any comparable business, 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
- 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*
- to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

State Water’s role is primarily operational and commercial in nature. Regulatory and policy functions relating to water resource management issues are the responsibility of DIPNR. However, in undertaking its role State Water will be required to work closely with DIPNR and there still remains some necessary overlap in the functions of State Water and DIPNR. These issues are discussed further below.

2.2 Functions

State Water’s main role is water delivery to customers and for environmental benefit, asset management of water infrastructure and commercial service delivery to its customers. Section 6 of the Act sets out the principal functions of State Water as follows:

- to capture and store water and to release water:
 - to persons entitled to take water, including release to regional towns
 - for the purposes of flood management
 - for any lawful purpose, including the release of environmental water
- to construct, maintain and operate water management works
- any other functions conferred or imposed on it by the operating licence or by or under the Act 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 will take on the functions of a water supply authority, when it becomes responsible for operating the Fish River water supply scheme in 2005. Some issues related to functions that are likely to be conferred on State Water by the operating licence (delegated functions) and to water supply functions are discussed below.

2.2.1 Delegated functions

The Operating Licence can confer on State Water specified functions of either the Minister for Natural Resources under the *Water Management Act 2000* or the *Water Act 1912*, or the Water Administration Ministerial Corporation⁸ under any Act or law.⁹ These functions can be conferred exclusively on State Water, or non-exclusively (which means they can be exercised by both the Minister for Natural Resources or the Ministerial Corporation and State Water).

Under clauses 3.1.3 or 3.1.4 of the Interim Licence, it is proposed that a number of functions be conferred non-exclusively on State Water, subject to agreement between the Minister for Energy & Utilities and the Minister for Natural Resources (see Appendix 2). Generally speaking, these functions will enable State Water to:

- administer the release of water and pursue unpaid bills (eg, debiting and crediting of water accounts; imposing and recovering fees, charges and civil penalties; reading meters)
- protect water sources (eg, directing temporary water restrictions; directions to protect water sources; directions to stop work; taking remedial measures; applying for an injunction)
- protect against fraudulent extraction of water (eg, suspending any access licences and approvals; debiting up to 5 times the amount of water taken from any water allocations credited to an account; imposing civil penalties; directions concerning waste of water).

These compliance and enforcement functions complement State Water's water delivery role, by enabling it to take action to prevent failure to pay for water and fraudulent extraction of water. However, DIPNR also has functions in this area. As the resource manager, its role is to ensure water is being allocated correctly to users and the environment, and there is no fraudulent extraction of water from the system.

The Tribunal believes it is important that the exercise of these functions is properly delineated and co-ordinated between DIPNR and State Water. It understands that DIPNR and State Water are implementing protocols that cover their respective responsibilities regarding compliance and enforcement.

⁸ The Water Administration Ministerial Corporation is the legal entity which may exercise its functions and otherwise act in the name of DIPNR (see ss.372-377 Water Management Act). As the Department is not a legal entity, the Ministerial Corporation has been set up to enable the Department to undertake certain functions, for example to enter into commercial operations and acquire land. The affairs of the Ministerial Corporation are managed by the Minister for Natural Resources. Under the Water Act, the Ministerial Corporation has been given licensing and enforcement powers, whereas under the Water Management Act the Minister for Natural Resources has been given these powers.

⁹ Such functions can only be conferred with the Minister's or Premier's concurrence.

The Tribunal welcomes comments on:

- *whether the delegated functions outlined above include all the appropriate functions that need to be delegated to State Water for it to effectively perform its role*
- *whether any of these functions should be exclusively conferred on State Water or confined in any way*
- *whether the operating licence should address how the exercise of these functions is to be co-ordinated between State Water and DIPNR.*

2.2.2 Water supply functions

From 1 January 2005, when it takes on responsibility for operating the Fish River water supply scheme, State Water's functions will include those of a "water supply authority" under the Water Management Act, and it will be subject to legislative requirements applying to water supply authorities under other laws. The functions of a water supply authority are:

- to construct, maintain and operate water management works and other associated works (with the approval of the Minister)
- to conduct research, collect information and develop technology in relation to water management
- to do anything to enable the objects of the Water Management Act to be attained.

It must exercise its functions consistently with the principles of ecologically sustainable development. The Minister may appoint a person to investigate and review the efficiency of a water supply authority in exercising its functions.

Water supply authorities are given various regulatory powers. Some of these powers are similar to those given to State Water generally, such as the power to read meters, enter land for inspections and find sources of pollution. However, water supply authorities may also levy service charges on land. Regulations under the Act specify the basis or bases according to which the authority may levy service charges, and the charges must also be approved by the Minister.

The Tribunal welcomes comments on whether any aspects of operating the Fish River water supply scheme should be specifically addressed in the operating licence.

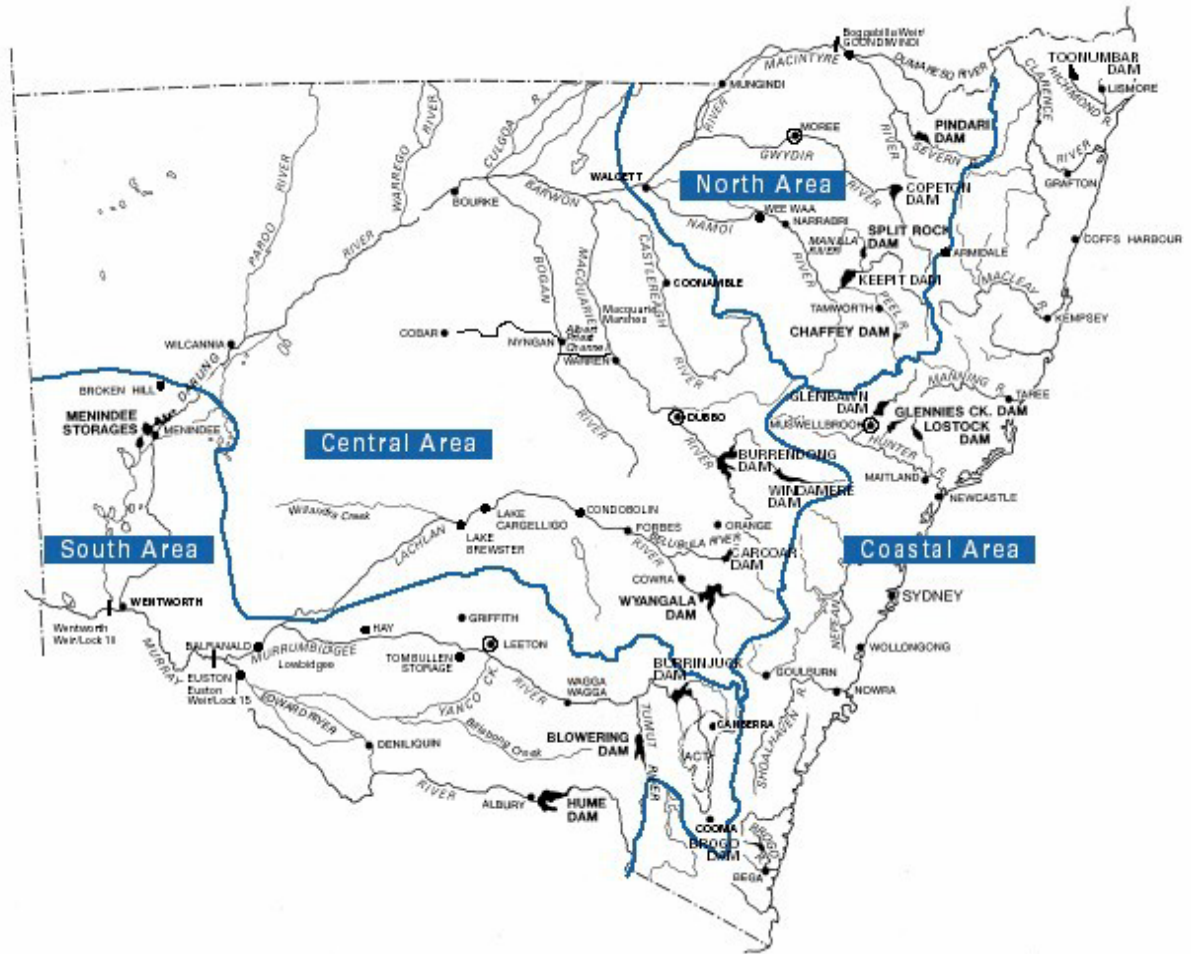
2.3 Areas of operation

State Water's area of operation is the whole of NSW, other than the areas of operation of Sydney Water Corporation, Sydney Catchment Authority, Hunter Water Corporation or of a water supply authority (other than the area of operation of the Fish River water supply scheme).

Figure 1 illustrates State Water's areas of operation, and indicates the location of its 18 major dams and four Customer Service Areas.¹⁰

¹⁰ State Water, *Annual Report 2002 - 2003*, p 2.

Figure 1 State Water Customer Service Areas



3 REGULATORY FRAMEWORK

State Water operates within a complex regulatory framework. Among other things, this framework imposes constraints on the prices it can charge for its services and how much water it can supply and to whom. It includes many components, of which the Initial Operating Licence will be just one.

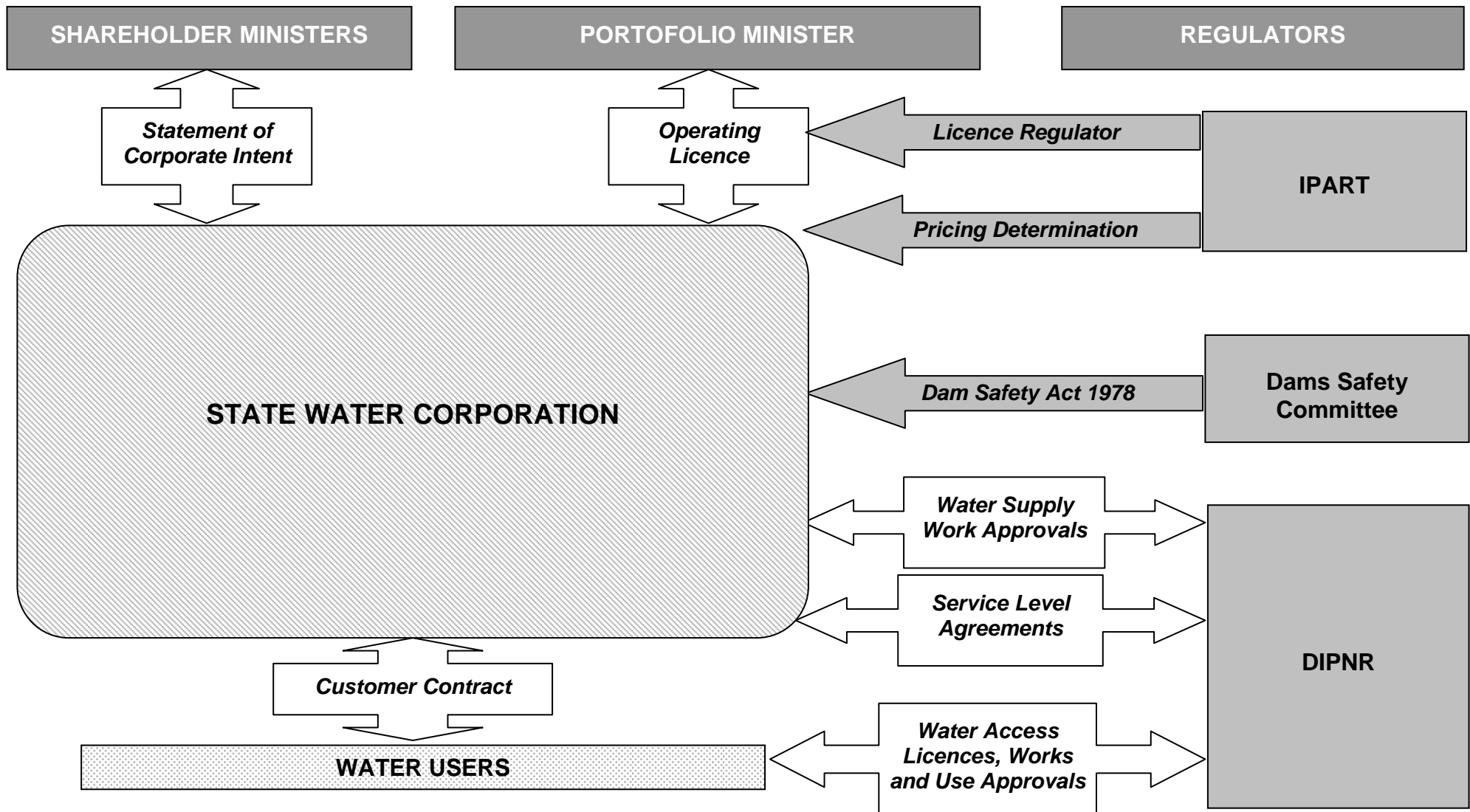
One of the key components of the regulatory framework is the *State Water Corporation Act 2004* (the Act) which, as Chapter 2 discussed, establishes State Water's objectives and functions. The Act also sets out requirements for its operating licence (see Chapter 4).

Other components include:

- a *Statement of Corporate Intent*, which is negotiated annually between the shareholders and management of State Water
- the *Interim Operating Licence*, which outlines the terms and conditions under which State Water is currently required to operate, and which the Initial Operating Licence will replace
- the Tribunal, whose role includes monitoring and reporting on State Water's compliance with its Operating Licence and regulating bulk water prices
- the *Water Management Act 2000* and *Water Act 1912*, which guide water management in NSW. DIPNR is the lead agency for ensuring compliance with these Acts.
- other NSW agencies or organisations, such as the Dam Safety Committee, the Catchment Management Authorities, and the Natural Resources Commission
- Federal Government initiatives, such as the National Water Initiative and the initiative in relation to the Murray-Darling Basin.

These other components are discussed further below. Figure 2 summarises State Water's key regulatory relationships.

FIGURE 2 STATE WATER REGULATORY RELATIONSHIPS



3.1.1 Statement of Corporate Intent

Like other State Owned Corporations, State Water is required to have a *Statement of Corporate Intent* (SCI), which is an annual agreement between its shareholders (the Treasurer and the Minister for Energy and Utilities) and its management. The purpose of the SCI is to enhance management's accountability for performance, and make clear the shareholders' expectations in terms of financial performance.

State Water must prepare and submit to the shareholders a draft SCI not later than one month after the commencement of each financial year. The SCI must contain, among other things, future financial performance targets and capital programs.

3.1.2 Interim Operating Licence

State Water's Interim Operating Licence was established to provide a basic regulatory framework while the Initial Operating Licence is being developed, and will cease to have effect on 1 July 2005.¹¹ It covers a range of issues, including:

- State Water's functions and areas of operation.
- Customers and community engagement.
- Asset management.
- Water delivery operations.
- Memoranda of understanding with Government agencies.
- Operational audit.
- Licence review.

The Interim Licence also includes requirements relating to the development of draft performance standards, a Total Asset Management Strategy, a Customer Service Charter, a Code of Practice and procedure on debt management, an Environment Management Plan, a Drought Management Plan and a Memorandum of Understanding between State Water and each of DEC, NSW Fisheries and DIPNR. It also provides for a number of functions under the Water Management Act and Parts 2, 5 and 9 of the Water Act to be delegated to State Water via Ministerial agreements (discussed in section 2.2.1).

The Interim Licence does not include terms or conditions in relation to performance standards or require the preparation of operational audits by the Tribunal, although the Initial Operating Licence is required to include such terms.

The Tribunal will build on the work of the Interim Licence in determining the Initial Operating Licence, and will consider any plans, strategies or other initiatives developed in compliance with the requirements of the Interim Licence as part of this review.

¹¹ A copy of the Interim Licence is attached in Appendix 2.

3.1.3 Water Management Act 2000

The *Water Management Act 2000*¹² is one of two Acts that guide water management in NSW. DIPNR is the lead agency responsible for administering the Act. Several of the key instruments established under this Act play an important role in regulating State Water, including the *State Water Management Outcomes Plan* (SWMOP) and *Water Sharing Plans*. In addition:

- DIPNR issues State Water with *water supply work approvals*, which are a type of *water management work approval* under the Water Management Act. These approvals provide the conditions under which State Water must use its infrastructure to access water for storage and delivery using river channels and other natural features.
- State Water is considered to be a ‘major utility’ for the purposes of the Water Management Act, which means it must be reviewed by DIPNR before the end of each 5-year period following the issue of a *water supply work approval*.
- State Water’s customers are required to hold an *access licence*, which are issued by DIPNR under the Water Management Act.
- State Water is required to hold a *local water utility access licence* in relation to the operation of the Fish River water supply scheme, which is issued by DIPNR.

State Water Management Outcomes Plan

The current SWMOP¹³ provides direction for all water management in NSW including (but not limited to) the creation of management plans that address water sharing; water use; drainage management; floodplain management; controlled activities and aquifer interference; and environmental protection.

The SWMOP sets both long-term outcomes and 5-year management targets for water management. These are based on the principle of continuous improvement in the water-dependent environment and in the social and economic benefits the community receives from its water sources and their dependent ecosystems.

The SWMOP must promote the water management principles set out in the Water Management Act¹⁴ and is also required to be consistent with the Interim Environmental Objectives for Water Quality and River Flow developed for each catchment in NSW, and any relevant Intergovernmental Agreements, international obligations or government policies.

¹² Most of the provisions of the *Water Management Act 2000* commenced operation on 1 July 2004.

¹³ The current SWMOP was gazetted on 18 December 2002 and has effect for a period of 5 years from the date it is gazetted.

¹⁴ Section 5 *Water Management Act 2000*.

Water Sharing Plans

Water Sharing Plans¹⁵ set out the rules for water sharing between the environment and extractive users in specified areas, and for determining how much water will be available for extraction in those areas. They determine to whom and how much State Water can supply water. These plans can also include:

- mandatory conditions to which *access licences* and *water supply work approvals* are to be subject
- monitoring and reporting requirements to be imposed as conditions of approvals issued under the Water Management Act
- how accounts for a particular area or water source should be operated, such as the carrying over of credits from one accounting period to the next, the maximum credit that may be allowed to accumulate in any account, and the withdrawal of water from any account by reason of evaporation or other circumstances.

Water Sharing Plans have a life of 10 years and can be amended by the Minister during this period. Each plan is to be reviewed by the Minister within the fifth year of its term and to be audited at least every 5 years by an audit panel appointed by the Minister. Each plan is to contain performance indicators that are to be monitored throughout the term and reported on as part of the review or audit. Under the Water Management Act, 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. The Implementation Program is to be reviewed annually by DIPNR and the results are to be included in the annual report of DIPNR.

To date, Water Sharing Plans have not been introduced for all areas.¹⁶ However, Water Sharing Plans have commenced for most inland regulated river systems and the remaining water sharing plans are anticipated to commence within the next 12 months.

Water supply work approvals

DIPNR is to issue *water supply work approvals* to State Water in relation to each regulated river water source. These approvals are intended to ensure that water is delivered to water users in compliance with Water Sharing Plans. The approvals can be subject to conditions, including mandatory conditions imposed under the Water Sharing Plans and other conditions the Minister sees fit to impose, including conditions relating to the protection of the environment.

While *water supply work approvals* have not yet been issued by DIPNR, they are likely to contain conditions relating to reporting and monitoring requirements, annual compliance reporting and environment protection requirements (including compliance with a strategy being developed by the government for addressing the effects of coldwater pollution on regulated rivers). They are also likely to require compliance with Implementation Manuals, which are to be developed at the same time as the approvals and will set out river system-specific conditions or rules and include flood operation procedures.

¹⁵ Water Sharing Plans are a specific type of management plan under the Water Management Act. Management plans must be consistent with other instruments, such as the SWMOP: s.16 Water Management Act.

¹⁶ As at 1 July 2004, 31 Water Sharing Plans had come into effect, largely on regulated rivers and on some unregulated rivers.

Access licences

State Water's customers are required to hold an *access licence*, issued by DIPNR. This licence entitles the holder to a share of available water (expressed in units or ML). The quantity of water the holder can extract in any year depends on the available water determination in their areas (as determined by DIPNR). Customers who want to use water on land for irrigation, are also required to obtain a *water use approval* and a *water supply work approval* from DIPNR.

As a water supply authority in relation to the Fish River water supply scheme, State Water will be the holder of a *local water utility access licence*, issued by DIPNR. However, State Water is not required to hold an access licence in relation to its bulk water delivery services. It is only entitled to store and deliver this water in accordance with its *water supply work approvals*, and not to use the water.

3.1.4 Water Act 1912

Only those areas of the state covered by a Water Sharing Plan are governed by the Water Management Act.¹⁷ In areas for which such a plan is yet to be developed, the provisions of the *Water Act 1912* continue to operate.

Licences under the Water Act allocate a maximum volume of water that can be taken by the licence holder. The amount is determined in accordance with a volumetric water allocations scheme, which is prepared by the Water Administration Ministerial Corporation¹⁸ and can be modified from time to time.

Under the Water Act, State Water is licensed as a 'water management authority' and is subject to such conditions as the Ministerial Corporation or the Act imposes. A water management licence authorises the holder to take and use water from any water source and to construct or use a water management work. Water management licences are reviewed every 5 years and issued for a period of 20 years.

3.1.5 The Independent Pricing and Regulatory Tribunal (the Tribunal)

Under the State Water Corporation Act (sections 30 & 31), the Tribunal is:

- to make recommendations to grant, amend or cancel State Water's Operating Licence
- to impose, amend or cancel conditions in relation to the Operating Licence
- to monitor and report on compliance with the Operating Licence
- to determine the Operating Licence fee (if any)
- to impose monetary penalties or require other action to be taken in relation to contraventions of the Operating Licence under section 17 of the Act
- to prepare operational audits of State Water at the times directed by the Minister in accordance with the Operating Licence.

¹⁷ Licences issued under the Water Act in those areas are replaced by access licences under the Water Management Act.

¹⁸ The Water Administration Ministerial Corporation is the legal entity which may exercise its functions and otherwise act in the name of DIPNR.

At the conclusion of this review, the Tribunal will make a recommendation to the Minister on the terms of State Water's Initial Operating Licence. The Tribunal will also periodically determine the maximum prices State Water can charge for its bulk water services.

3.1.6 Other organisations or agencies

In addition to DIPNR and the Tribunal, several other NSW bodies are involved in either regulating State Water or have an impact upon State Water's operations. These include the Dam Safety Committee, the Catchment Management Authorities, and Natural Resources Commission.

Dam Safety Committee

The Dam Safety Committee is a statutory body set up under the *Dams Safety Act 1978*. The regulatory requirements imposed by the Committee are a major driver of the maintenance undertaken by State Water to ensure dam safety and are a significant area of capital expenditure.

The Dam Safety Committee's functions include the surveillance of dams (as listed in a schedule to the Act); investigation of any activity in relation to the dams; and formulation of measures to ensure the safety of the dams. The Committee also has extensive powers, including to enter land and undertake tests on the dams, to direct dam owners to carry out activities if it considers that the dam is in danger of becoming unsafe, and to take control of the dam where a state of emergency exists in relation to the dam.

To minimise the risks posed by dams, the Committee requires dam owners (such as State Water) to undertake:

- regular monitoring and surveillance of their dams
- appropriate operation and maintenance procedures and practices for the dams
- ongoing assessment of the dam's behaviour (based on monitoring and surveillance information) and any action required to ensure that the dams are maintained in a safe condition
- regular review of the compliance of the dams with current requirements
- preparation of Dam Safety Emergency Plans, in association with plans prepared by the State Emergency Service, to mitigate the effects of downstream flooding, either due to natural conditions or a dam failure.

The Committee also audits the effectiveness of these dam safety measures by requiring dam owners to submit five-yearly Surveillance Reports.

Catchment Management Authorities

Catchment Management Authorities (CMAs) are likely to be key stakeholders with whom State Water will need to consult in relation to its operations. These 13 statutory authorities are subject to Ministerial control, and have the following functions under the *Catchment Management Authorities Act 2003*:

- preparing catchment action plans and associated investment strategies in consultation with the relevant communities

- recommending and managing incentive programs to implement the catchment action plans and maximise environmental outcomes
- allocating funds to support the development of Property Vegetation Plans
- providing education and training on natural resource management, especially vegetation management.

Catchment action plans aim to build on the current catchment blueprints and regional vegetation management plans. They are required to be consistent with the State Water Management Outcomes Plan and any management plans under the Water Management Act (such as Water Sharing Plans).¹⁹ Regard must be had to Catchment action plans when formulating a management plan under the Water Management Act.

Under the Water Management Act, the Minister may authorise CMAs to exercise the following functions:

- assist in the development of, in consultations about or implementation of management plans under the Act
- manage adaptive environmental water under access licences, including the establishment of an “environmental water trust fund” for the purposes of achieving its environmental water targets set out in its catchment action plans
- monitor water quality and other environmental health objectives of management plans (including in connection with a review or audit of any such plan).

Under the Interim Licence, there is to be one representative from CMAs on the Community Consultative Committee and the valley-based Customer Service Committees are to include representatives from the relevant CMA. CMAs may also be a customer of State Water where the Minister amends a management plan under s.45 of the Water Management Act to enable a CMA to obtain an access licence (containing conditions for adaptive environmental water use) as a result of the availability of additional water that has been conserved by public expenditure or works.

Natural Resources Commission

Through its involvement with Water Sharing Plans, catchment action plans and other natural resource management issues, the Natural Resources Commission (NRC) will also have an indirect impact on State Water’s operations. This independent body’s role includes:

- establishing State-wide standards and targets for a range of natural resource management issues including water quality, salinity, native vegetation, soil and biodiversity²⁰
- approving catchment action plans developed by Catchment Management Authorities and auditing the implementation of these plans
- conducting inquiries and assessments into natural resource matters and providing advice to the Government.

¹⁹ And to comply with any State-wide standards and targets set by the Natural Resources Commission.

²⁰ These standards will be subject to wide public consultation prior to being established.

The NRC is also involved in administering Water Sharing Plans established under the Water Management Act. Prior to the expiry of a plan's initial 10-year term, the NRC will review the extent to which it is achieving the State-wide standards and the targets for natural resource management in the relevant catchment management area. It can then recommend that the plan be extended for a further 10 years (and any changes to the plan that may be required).

3.1.7 Federal Government initiatives

On 25 June 2004, the Council of Australian Government's (COAG) agreed to a National Water Initiative aimed to result in more secure water access entitlements; the expansion of water markets to ensure water is put to the best use; more sophisticated water planning to deal with key issues such as interaction between surface and groundwater systems and provision of water to meet environmental outcomes; address over-allocated systems as soon as possible; and more efficient management of water in urban environments. The National Water Initiative is detailed in two intergovernmental agreements:

- Intergovernmental Agreement on a National Water Initiative (the NWI Agreement), between the Federal Government and all States and Territory governments (excluding Tasmania and Western Australia).
- Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin (the MDB Water Agreement), between the Federal Government and the State and Territory governments of NSW, ACT, SA and VIC.

The NWI Agreement includes a number of agreed outcomes and commitments to specific actions in relation to the following key elements:

- Water access entitlements and planning framework.
- Water markets and trading.
- Best practice water pricing.
- Integrated management of water for environmental and other public benefit outcomes.
- Water resource accounting.
- Urban water reform.
- Knowledge and capacity building.
- Community partnerships and adjustment.

The MDB Water Agreement sets out arrangements for investing \$500 million over 5 years (commencing 2004-05) to reduce the level of water over-allocation and achieve specific environmental outcomes in the Murray-Darling Basin. Water recovery measures to be funded under the MDB Water Agreement include investments in water infrastructure and behavioural change and purchase of water on the market, with recovered water to be set aside for environmental purposes.

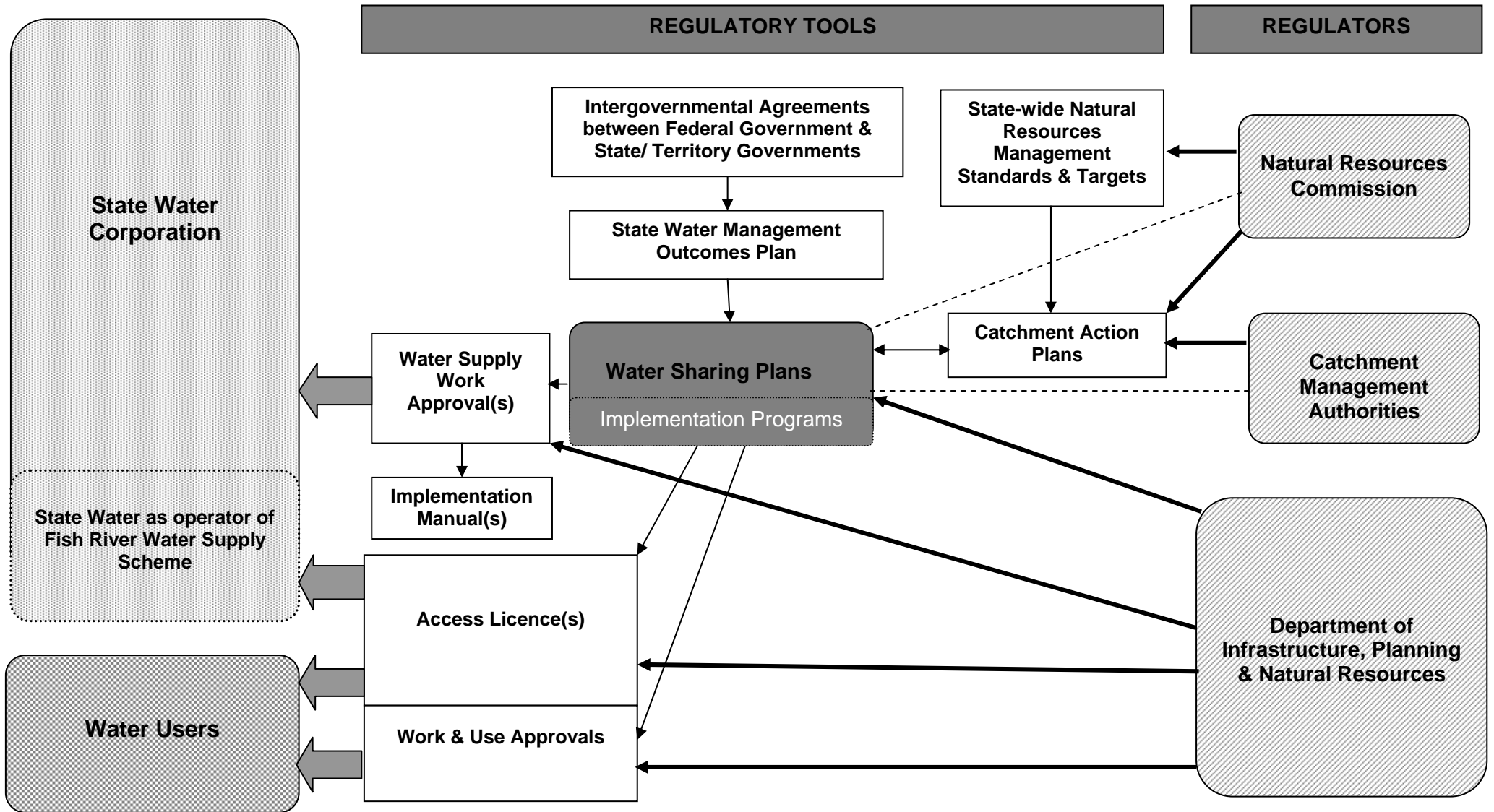
The *State Water Management Outcomes Plan* must be consistent with government obligations arising under inter-governmental agreements.

The NWI and MDB Water Agreements are likely to impact on State Water's operations to the extent that State Water will need to play its part in implementing the Agreements through appropriate water releases consistent with those Agreements. The actions required under the Agreements will be reflected in Water Sharing Plans, which State Water must comply with.

Under the NWI Agreement national accounting systems, standardised reporting formats and water resource accounts need to be developed and implemented. National meter specifications and standards also need to be developed and applied. Once this has occurred, State Water's operations will need to be undertaken in accordance with these national requirements. The Tribunal will also need to take the NWI Agreement into account in setting bulk water prices (see the separate Issues Paper in relation to the Tribunal's review of bulk water prices to apply from 1 July 2005).

Figure 3 describes the inter-relationship between the various regulatory instruments for water resource management in NSW.

FIGURE 3 WATER MANAGEMENT FRAMEWORK



4 THE ROLE OF THE OPERATING LICENCE

As noted in Chapter 3, once the Initial Operating Licence has been developed and approved, it will be one component of the regulatory framework in which State Water operates. Different stakeholders may have different views on what role this licence should play. However, its main role is to help ensure that State Water operates its business in a way that is consistent with the objectives set out for it in the Act, and to prevent it from abusing its monopoly power. The licence can do this by:

- setting out the terms and conditions under which State Water must operate
- helping to make State Water's management accountable for its performance to Government, stakeholders and the wider community
- establishing minimum performance and service quality standards that State Water must meet
- encouraging compliance with State Water's legislated obligations, through ongoing maintenance and auditing of its performance.

The Tribunal also needs to ensure that the Initial Operating Licence meets the requirements set out for this licence in the Act, and is consistent with regulatory best practice.

4.1 Statutory requirements

Sections 12(1) and 12(2) of the Act specify that State Water's operating licence must include terms and conditions:

- under which it is required to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services to capture, store and release water
- that specify the performance standards that its systems and services are required to meet
- that provide for its operations to be audited by the Tribunal.

4.2 Regulatory best practice

State Water's operating licence needs to perform its role without imposing unreasonable compliance costs on State Water or an excessive administrative burden for the Tribunal. The Tribunal believes that to do this, it must:

- **Express State Water's obligations simply and unambiguously**, to ensure both State Water and the Tribunal understand clearly what State Water must do to comply with the licence. These obligations can take several forms—they can prescribe certain actions, require specific outcomes or require the implementation of a plan or process. Requiring specific outcomes can minimise compliance costs, by allowing regulated entities the freedom to choose how they achieve these outcomes. On the other hand, prescribing actions can provide certainty to regulated entities in terms of what they need to do to comply.
- **Minimise regulatory overlap**. As much as possible, the operating licence should avoid duplicating other legislative or regulatory requirements. Overlap can waste resources, confuse priorities and reduce the regulated entity's level of accountability.

- **Provide measurable and auditable criteria against which compliance can be assessed.** Audits will be the primary means of assessing compliance with the operating licence, so performance measures or requirements in the licence should be able to be readily verified and audited. The Tribunal believes that licence requirements should be as relevant, measurable and outcome-focused as possible.
- **Provide for monitoring and reporting of performance.** State Water's Interim Operating Licence requires the Tribunal to audit State Water's operations by set time periods. The subsequent audit report is then to be presented to the Minister for public release. To provide a meaningful public report on State Water's performance and progress, the Tribunal believes performance reporting under the Initial Operating Licence should focus on the core responsibilities and functions of State Water and aspects of performance that are important to stakeholders and the community.

Given the regulatory framework State Water operates within, the Tribunal welcomes comment on how potential regulatory overlap should be addressed in setting the terms of the Operating Licence.

5 SYSTEM PERFORMANCE

In line with the terms of reference for this review, the Tribunal will consider what terms and conditions relating to State Water's system performance should be included in the Initial Operating Licence. As noted in Chapter 4, the Act requires the licence to specify the performance standards State Water's systems and services must meet in relation to water delivery and other functions as applicable.

The Tribunal considers that State Water's systems and services includes the structures and other assets it builds, owns and operates for the purpose of capturing and storing water, releasing water to customers and the environment, and managing floods. They also include the systems it has in place for managing its impact on the environment, engaging with the community and its customers, serving its customers, and managing its assets.

For State Water to meet its objectives under the Act—including to conduct its operations in an efficient, effective, safe and financially responsible manner, to be a successful business, to exhibit a sense of social responsibility, and to comply with the principles of ecologically sustainable development—it needs to operate and maintain these systems in an appropriate manner, and deliver services of an appropriate quality. The Initial Operating Licence can play a useful role in helping to ensure that this occurs by including obligations to meet specified performance standards and/or monitor specified performance indicators, and to develop and implement suitable asset management strategies.

5.1 Obligations to meet performance standards and monitor performance indicators

In a competitive market, there are strong incentives for a business to maintain and operate its systems in a way that ensures it can provide a quality service that satisfies customer needs and preferences—if it does not, customers can choose to switch to an alternative supplier. However, in a monopoly business, such as State Water, these incentives are not as strong. This creates a risk that the organisation's system performance may not be at appropriate levels.

Regulators often manage this risk by including obligations in the operating licence for the business to meet specified performance standards. These standards usually represent what is considered to be an appropriate minimum standard. Including them in the licence:

- increases the organisation's incentives to achieve appropriate performance and service quality standards (as failure to do so will mean it breaches its licence)
- increases management's accountability for achieving an appropriate performance and service standards
- provides a basis for monitoring and reporting on the ongoing performance of the business.

Regulators also use performance indicators in conjunction with, or as a substitute for, performance standards. Including performance indicators in the operating licence does not require the business to meet a specific performance standard – it only requires it to report on the level of performance achieved. This can enable regulators and other stakeholders to:

- compare the business' recent performance with its performance in earlier time periods or the performance of similar businesses, which can provide it with an incentive to improve its performance over time
- provide additional information related to the areas covered by system performance standards
- provide information related to areas for which there are no appropriate performance standards
- inform the decision making processes of regulatory agencies, governments and the organisation.

To help it determine what specific performance standards and performance indicators should be included in the operating licence, the Tribunal has identified a range of issues that need to be considered, and a range of potential standards and indicators.

5.1.1 Issues to consider in selecting system performance standards and/or indicators

Based on its terms of reference and good regulatory practice, the Tribunal believes that any system performance standard or indicator specified in the operating licence must:

- be relevant to State Water's objectives and functions under the Act
- be achievable, without significantly increasing the cost of service provision or affecting the water supply arrangements with customers (irrigators and country towns)
- measure system performance in objective terms, without significantly increasing administrative costs
- be concise, unambiguous and understandable to all stakeholders.²¹

In addition, a range of other issues related to the particular circumstances of State Water and its regulatory environment also need to be considered. These include:

- **The capability of its system.** Standards should take into account the inherent capabilities or limitations of the system. For instance, in looking at recommending water conservation or delivery accuracy standards for State Water, consideration should be given to what is reasonably achievable given the features and characteristics of the water delivery system.
- **Factors outside its control or areas of responsibility.** These factors include, for example, catchment characteristics that can impact on water quality after water is released from State Water's dams, and weather conditions such as droughts.
- **The availability of information required to set standards.** A certain level of information is required to establish appropriate standards. For example, in setting

²¹ Halcrow Management Sciences Ltd, *Review of System Performance Standards in Sydney Water Corporation's Operating Licence*, March 2001, p 11.

standards relating to the accuracy of State Water's releases, information would be required on the current margin for error and an appropriate target level.

For this reason, one of the key tasks for the review will be to determine what information is available to set performance standards. Where sufficient information is not available for a particular performance standard, it may be appropriate to recommend that the terms of the Initial Licence require State Water to obtain this information. One way of doing this would be to require it to report against a suite of auditable system performance indicators.

- **The requirements placed on the organisation by other regulatory instruments.** To avoid duplicating other legislative or regulatory requirements, it is important to consider the regulatory framework in which State Water operates. However, this does not mean that performance standards or indicators should not relate or refer to other regulatory requirements. In some cases, an organisation's performance against, or level of compliance with, these other regulatory instruments may not always be apparent to stakeholders. If compliance is included in the operating licence, either as a performance standard subject to audit or as an indicator to be reported on, an organisation's compliance with key regulatory requirements can become much more transparent.

5.1.2 Potential performance standards and indicators for State Water

The Tribunal has identified a range of possible performance standards or measures related to each of State Water's key operational areas. This range, which is summarised in Table 1, is to facilitate discussion on this issue and act as a starting point for the development of performance standards and indicators.

The selection of performance standards and indicators should be based on the criteria discussed in 5.1.1 above. That is, performance standards and indicators should be measurable, relate to State Water's objectives and functions under the Act, and be of benefit to State Water, its stakeholders and/or the wider community without imposing undue cost on State Water or the Tribunal (as licence regulator). The Tribunal intends to engage a consultant to look at possible performance standards and indicators for State Water.

The range also raises a number of further issues that need to be considered. These include:

- To put performance indicators into context and allow meaningful comparison over time, it may also be appropriate to include obligations to collect baseline explanatory data (such as customer numbers, system lengths or capacities, weather conditions, etc). What baseline explanatory data should State Water be required to collect?
- Given its area of operations and system characteristics, what water conservation indicators or standards should State Water be subject to?
- What are suitable indicators for assessing and reporting State Water's compliance with Water Sharing Plans and Water Supply Work Approvals?
- To what extent is State Water responsible for water quality and other environmental effects downstream of its storages? If other factors can influence downstream water quality, should the Initial Operating Licence set performance standards or indicators for State Water in this area? (See Chapter 6.)
- The Interim Operating Licence provides that a number of functions can be delegated to State Water (eg, the debiting and crediting of water accounts). Should the Operating

Licence require State Water's performance in these areas to be measured or subject to standards?

- State Water provides operational support to DIPNR in billing and metering of water from unregulated streams and groundwater sources. Should the Operating Licence set performance standards for these delegated functions? (See Chapter 7.)
- Given that other terms related to State Water's environmental, customer service and community engagement obligations may be included in the licence (see Chapters 5,6 and 7), what performance standards or indicators related to these operational areas are appropriate?

A further consideration is the potential need to apply different or additional performance standards and indicators to the Fish River water supply scheme. This is because some functions and assets (eg, water treatment works) of the Fish River scheme are different to the rest of State Water's operations.

The Tribunal welcomes comments on:

- *Appropriate performance standards and indicators for State Water, taking into account the need for these to be reasonable, measurable and auditable (as discussed in 5.1.1 and 5.1.2).*
- *Whether any components of State Water's system (eg, the Fish River water supply scheme) should be subject to different or additional performance standards and indicators.*
- *All of the other issues discussed above.*

Table 1 Potential performance standards or indicators for State Water

State Water's operational area	Standards or indicators
Capture and store of water	<ul style="list-style-type: none"> • Leakages from State Water's structures/system. • Unaccounted for water. • Storage evaporation losses.
Release of water allocated to customers and the environment	<ul style="list-style-type: none"> • Overview of water supply system (by valley and aggregate): length of natural water courses (km) as carriers; water volume released into water distribution system. • Percentage of customer's pumps with meters, breakdown of meters by type. • Accuracy of State Water's release, eg, over/under release relative to target release (could be measured in ML per year or % of water released from the dam over a year). • Volume of rejected water orders. • Compliance with Water Supply Work Approvals and Water Sharing Plans (WSPs). • Compliance with any additional requirements under inter-governmental agreements. • Timely release (ie, within targeted time) of water in response to orders placed by customers. • Percent of customer entitlements available throughout time period. • Incidence (eg, number of days) of flow shortfalls – ie, not enough water released to supply customer's orders. • Actual flows to the environment compared to flows that would have occurred under natural conditions. • Unplanned (notice not given to customers) water supply interruptions – cause, timing, duration and frequency. • Number of cases identified where volume of extraction exceeds licensed/ordered volume and volume of water involved. <p>(State Water accountable for monitoring water usage/extraction in all regulated systems. DIPNR responsible for monitoring water usage/extraction in all unregulated and groundwater systems. State Water to undertake monitoring on unregulated and groundwater systems under contract with DIPNR.)</p>
Flood management	<ul style="list-style-type: none"> • Number of uncontrolled dam overflows. • Risk of dam failure – eg, number of dams with 'intolerable' or 'unacceptable' risks. • Compliance with Dam Safety Committee requirements/recommendations.
Construction, maintenance and operation of water management works	<ul style="list-style-type: none"> • Compliance with Water Supply Work Approvals. • Compliance with Total Asset Management standards/requirements. • Risk assessment undertaken for assets. • Number of regulatory structures in supply system. • Proportion of regulatory structures in supply system that are automated.

State Water's operational area	Standards or indicators
Environmental management	<ul style="list-style-type: none"> • Water quality in State Water's storages (including algal levels). • Cold water pollution (eg, temperature of water released from storages relative to temperature of receiving waters). • Other quality characteristics of water released (from storages / areas managed by State Water). • Water quality in-stream/down-stream. • Compliance with environmental flow requirements of WSPs / Inter-governmental agreements. • In-stream erosion / watercourse degradation. • Fish passage (removal of impediments to fish passage or proportion and location of weirs and dams that obstruct fish passage). • CO₂ equivalent emissions of State Water's operations. • Energy consumption targets (eg, MJ per ML of water supplied). • Volume and type of waste annually sent to landfill from State Water's activities. • Extent and condition of native vegetation on State Water owned/managed lands.
Community Engagement	<ul style="list-style-type: none"> • Extent of consultation with community and customers. • Extent/level of information supplied to Community Consultative Committee (CCC) and Customer Service Committees (CSCs). • Summary of stakeholder evaluations of interactions with SW.
Customer service	<ul style="list-style-type: none"> • Timely advice to customers (in response to DIPNR's decision and advice to State Water) of allocation announcements. • Number of times (or proportion of customers) meters read and checked for accuracy. • Accuracy of invoicing and account maintenance. • Accurate debiting/crediting of customer's water accounts. • Overdue/unpaid bills (percent of customers). • Customers subject to special hardship or 'affordability' arrangements. • Suspension of Access Licences due to fraudulent extraction of water. • Number of restrictions/penalties/actions due to customer non-compliance with other supply requirements/conditions. • Time to respond to customer/stakeholder queries (eg, 'number of information statements turned around in 3 days'). • Customer complaints (could differentiate by subject of complaint). • Customer complaint resolution - eg, percent of complaints resolved within specified time periods. • Call centre performance (eg, time taken for telephone calls to be answered / connected to an operator). • Customer notification - eg, forewarning to customers/stakeholders of flow shortfalls/interruptions.

5.2 Obligations to develop and implement asset management strategies

Performance standards provide some oversight of asset management, in that performance against standards or indicators reflects the condition and effectiveness of the organisation's assets. Hence, deterioration against the standards and indicators may indicate problems in the conditions of the organisation's infrastructure.

However, standards and indicators reflect past or current asset management practices, rather than looking into the future. As a result, they may not reveal problems with asset management until after they have occurred. To address this issue, regulators often include obligations related to the development and implementation of suitable asset management strategies in operating licences. The need to include asset management provisions in State Water's Initial Operating Licence, and possible objectives for these provisions, are discussed below.

5.2.1 Need for asset management provisions in initial licence

State Water has experience in asset management, including developing and implementing asset management strategies. A significant part of its current asset management program is driven by Dam Safety Committee requirements, which are aimed at ensuring that State Water's dams are adequately maintained and managed.

Nevertheless, the Tribunal believes that this is an area that should be directly addressed in the Initial Operating Licence. The inclusion of asset management provisions or obligations in this licence can provide transparency and assurance to stakeholders, via the audit process. This is important, as a decline or failure of State Water's system performance could impact significantly on customers, the environment and the wider community.

State Water's Interim Operating Licence requires it to develop and implement a Total Asset Management Strategy, which meets certain requirements (see Appendix 2). No deadline for development and implementation of this Strategy is specified.

5.2.2 Possible objectives of asset management provisions in initial licence

The Tribunal will consider the appropriate objectives of including asset management provisions in State Water's Initial Operating Licence. GDH, one of the consultants the Tribunal engaged to assist in its review of the operating licences of Sydney Water Corporation and Sydney Catchment Authority, proposed the following objectives for the provisions included in those licences:

- to provide confidence to the Tribunal and stakeholders that the organisation is managing its assets sustainably and efficiently over their whole life cycle
- to provide assurance that:
 - the organisation's assets will meet required service levels now and into the future
 - assets are provided at an efficient, sustainable and affordable cost
 - asset risk is effectively managed to minimise the risk of system failures to customers, other stakeholders and the wider community
- to drive or facilitate continuous improvement in asset management

- to provide adequate communication and transparency, through reporting and independent auditing of asset management.

The Tribunal welcomes comments on what asset management obligations should be included in State Water's Operating Licence.

6 ENVIRONMENTAL OBLIGATIONS

State Water's core functions—the capture, store and release of water—have the potential to significantly affect the environment. For example, its storages (such as dams and weirs) can have major detrimental impacts on river health and biodiversity, by changing the natural flow of rivers, impeding the passage of fish, and interfering with ecological processes. The quality and temperature of water released from these storages can also affect river health. For example, the release of water contributes to cold water pollution, which is one of the key factors responsible for the reduction in the range and abundance of many freshwater fish species in NSW. It can also contribute to the spread of blue-green algae in rivers, which can contaminate water and cause significant harm to the river's ecosystem. In addition, like any organisation, State Water can affect the environment via its resource use and waste management practices.

In recognition of this, the terms of reference for this review require the Tribunal to recommend terms relating to environmental performance obligations for State Water's Initial Operating Licence. The Tribunal recognises that DIPNR will play a significant role in regulating State Water's environmental performance via its Water Supply Work Approvals (discussed below), and that State Water has arrangements in place with NSW Fisheries to address fish passage issues. Nevertheless, it believes that the operating licence can potentially play a useful role by:

- augmenting the broader regulatory framework in terms of environmental management, where necessary
- stipulating requirements regarding the development of an Environmental Management Plan, including the monitoring and reporting of State Water's performance against key environmental measures
- ensuring that State Water is subject to appropriate environmental obligations and that these requirements are transparent and enforceable.

Each of these issues is discussed below.

In recommending environmental requirements for inclusion in the Initial Operating Licence, it is important for the Tribunal to consider the level of accountability and responsibility that State Water has in relation to various environmental impacts. Table 1 in Chapter 5 lists possible environmental performance standards and indicators for State Water. Many of these relate to potential environmental impacts for which State Water is clearly responsible (eg, cold water releases, impediments to fish passage, and the release of water from dams to the environment in accord with Water Sharing Plans). However, for others (such as downstream water quality and riverbank erosion) the assignment of responsibility may be less clear.

6.1 Augmenting the broader regulatory framework

As noted above, other components of the regulatory framework that State Water operates within will play a large role in regulating its environmental performance. Under the Water Management Act, DIPNR will issue Water Supply Work Approvals to State Water. As discussed in section 3.1.3, these approvals are:

- intended to ensure that water is released to the environment and water users in compliance with Water Sharing Plans
- likely to contain environmental protection requirements, such as requirements relating to the implementation of a cold water pollution strategy (although, at this stage, there is some uncertainty in terms of the exact environmental protection provisions of Water Supply Work Approvals, as they are yet to be finalised).

It may be that State Water's operations have potential environmental impacts that are not adequately regulated through the broader regulatory framework. If so, it may be appropriate for these impacts to be regulated through the Initial Operating Licence.

State Water's Interim Operating Licence requires it to:

- Conduct its operations in compliance with the Water Management Act, and the State Water Management Outcomes Plans and Water Sharing Plans established under that Act
- As discussed in 6.3 below, enter into and abide by Memoranda of Understanding (MoUs) with the NSW Department of Environment and Conservation (DEC), NSW Fisheries and DIPNR, dealing with several environmental issues.

The Tribunal welcomes comments on:

- *whether any potential environmental impacts of State Water's operations are not adequately regulated through the broader regulatory framework*
- *if so, whether obligations to manage or minimise these impacts should be included in the Initial Operating Licence – either as part of system performance standards discussed in Chapter 5 or as a general requirement of the licence.*

6.2 Stipulating requirements for development of Environmental Management Plan

An Environmental Management Plan (EMP) is usually intended to guide an organisation's environmental performance and to communicate its environmental direction to its regulators and stakeholders and the wider community. It usually includes details of the strategies the agency is implementing to manage its environmental impact, and the targets or indicators against which it measures its environmental performance.

These targets usually include the timeframe in which the organisation aims to meet the target. Indicators are designed to provide stakeholders, regulators and the community with data on the environmental impact of an organisation's activities, the extent to which these activities are sustainable and trends in performance against these indicators. They can also provide the incentive and focus to improve environmental performance.

Currently, State Water's Interim Licence requires it to prepare an EMP that:

- includes an energy management policy
- applies appropriate targets of the NSW Government Energy Management Policy for energy consumption
- includes indicators to measure the environmental impact of State Water's asset operations and maintenance.

It may also be appropriate to require State Water to:

- consult with stakeholders in developing its EMP
- report regularly (eg, annually) on its performance or progress against its EMP
- subject its EMP to periodic review (eg, mid-term review).

It may be appropriate for the licence to require State Water to monitor and report on its performance against a specified range of environmental performance indicators—either as part of its EMP, or as part of the system performance standards and indicators discussed in Chapter 5. Table 1 in Chapter 5 lists some possible environmental performance indicators for State Water.

The Tribunal considers that the Initial Operating Licence should require State Water to record its performance against environmental indicators that:

- measure the environmental impacts of State Water's core activities (the capture, store and release of water)
- reflect fundamental aspects of its environmental performance
- are relevant and understandable to the community and stakeholders
- are cost effective to measure and report
- are consistent overtime, to allow a comparison of performance and identification of any trends in performance.

The Tribunal welcomes comments on:

- *the requirements (in terms of content, consultation and reporting) related to State Water's EMP that should be included in the Initial Operating Licence*
- *the environmental performance indicators that State Water should be required to monitor and report on (either as part of its EMP or as part of its system performance standards and indicators discussed in Chapter 5).*

6.3 Ensuring appropriate environmental performance obligations

Currently, State Water's Interim Operating Licence requires it to enter into and abide by MoUs with DEC, NSW Fisheries and DIPNR. These MoUs are intended to regulate how State Water works with these agencies to manage the environmental impacts of its operations, including water quality in storages, cold water pollution below dams, and fish passage impacts.

MoUs can be effective in establishing a broad framework for cooperative relations between two agencies, rather than rigidly specifying the nature of the relationship itself. This has the advantage of allowing flexibility and the relationship to evolve as circumstances change.

However, the McClellan Inquiry²² was critical of the MoUs between Sydney Water Corporation and its regulators, on the basis that they were unenforceable and relying on the cooperation of the agencies involved for their effective implementation. MoUs also lack transparency, which can be critical when they are addressing issues that are of concern to a range of stakeholders. Furthermore, the Interim Licence provides no guidance on the content of the MoUs and no requirement for them to include time lines, targets or review provisions.

The Tribunal recognises that MoUs between State Water and each of NSW Fisheries, DIPNR and DEC can lead to positive environmental outcomes. However, it can be argued that any environmental obligations of State Water (eg, relating to fish passage or cold water pollution) should be specified in its operating licence. This would mean environmental requirements are more transparent and more enforceable.

For example, the licence could require State Water to complete certain cold water pollution works, drawing on research in this area and target 26 of the State Water Management Outcomes Plan.²³ Alternatively, it could include obligations to achieve specified minimum standards in relation to its environmental performance. A range of possible environmental performance standards are listed in Table 1 in Chapter 5.

The Tribunal welcomes comments on:

- *whether there are aspects of the MoUs between State Water and each of DEC, NSW Fisheries and DIPNR that need clarification or strengthening*
- *whether any terms or conditions included in these MoUs should be included as an obligation in State Water's Initial Operating Licence.*

²² Sydney Water Inquiry, *Final Report*, December 1998.

²³ The SWMOP was established under the WMA, to guide the planning and management of the State's water resources. It contains an agreed 5-year target (Target 26) to address cold water pollution. This target includes:

- identifying and prioritising dams responsible for cold water pollution
- initiating action to ensure that the temperature regime below these dams is kept within a specified range
- structural modification of at least two priority dams
- improved operational protocols established for priority dams.

7 CUSTOMER SERVICE OBLIGATIONS

In line with the terms of reference for the review, the Tribunal will consider what obligations related to customer service and guarantees the Initial Operating Licence should include.

State Water's Interim Operating Licence requires it to develop a Customer Service Charter within 6 months of that licence's commencement date (1 July 2004), and in doing so, to consult with valley-based Customer Service Committees (CSCs). It also specifies that this Charter should outline the levels of service and mutual obligations of State Water and its customers, and set out customer service performance standards and indicators, including timely delivery of water to licensed customers. The interim licence also requires State Water to establish internal complaints handling procedures, prepare annual reports on complaints categories and establish a Dispute Resolution Scheme.

The Tribunal believes that the customer service obligations it recommends for State Water's Initial Operating Licence need to reflect:

- the key service issues for State Water's customers
- State Water's relationship with these customers.

7.1 The key service issues for customers

Water released from State Water is a vital input into the businesses of State Water's customers. Crops and production are planned around the availability of water. Consequently, key service-related issues for bulk water users are likely to include:

- the price of bulk water (which is the subject of a separate review by the Tribunal)
- the timely delivery of water in response to customer orders
- accurate maintenance of customer's accounts
- the provision of adequate and timely information, such as adequate warning of any water supply interruption or restrictions.

It may be appropriate to include customer service obligations that reflect these issues in the operating licence. It may also be appropriate to express these obligations as customer service performance standards and/or indicators. Table 1 in Chapter 5 provides a list of possible performance standards and indicators.

The Tribunal welcomes comments on:

- *whether there are important service related issues for State Water's customers other than those specified above*
- *if so, whether customers service obligations included in the Initial Operating Licence should reflect these issues*
- *what customer service performance standards and indicators should be included in the licence.*

7.2 The relationship between State Water and its customers

State Water's core business is providing services to 'regulated river' customers.²⁴ Services to these customers include providing water allocations from dams, billing and metering. Customers are created via an Access Licence that is issued by DIPNR, under the Water Management Act. These licences are expressed as a right to a certain share of available water.

However, State Water can also be delegated functions under the Water Management Act and Water Act (discussed in section 2.2.1). These delegated functions are critical to State Water's relationship with these customers, as they empower it to take steps to protect the integrity of the supply system and prevent fraudulent extraction of water. For example, under the interim licence, State Water has been delegated (subject to Ministerial arrangements) the power to suspend access licences where the holder has failed to comply with the conditions of the licence. It has also been delegated the function of keeping the water allocation accounts for each access licence and crediting and debiting these accounts in accordance with DIPNR's available water determinations and water taken by the customer.

These delegated functions and any requirements or obligations imposed through the operating licence provide the basis for State Water's relationship with its customers.

A further matter to consider is whether different or additional factors influence the relationship between State Water and its customers in the Fish River water supply scheme.

The Tribunal welcomes comments on the implications (if any) on State Water's relationship with 'regulated river customers':

- *of the fact that customers are created via access licences with DIPNR (eg, must State Water consult with DIPNR before taking certain action in relation to the customer?)*
- *of operating the Fish River water supply scheme.*

Under contract to DIPNR, State Water also provides billing and metering services for unregulated river and groundwater users. DIPNR is responsible for managing unregulated rivers and groundwater systems.

The Tribunal is of the view that any customer service requirements in providing billing and metering services should be specified in the contract between DIPNR and State Water and provided by State Water in performance of their contractual obligations, rather than being specified in the Operating Licence.

The Tribunal welcomes comments on whether the Initial Operating Licence should include customer service obligations related to the services it provides to unregulated rivers and groundwater users (who are DIPNR's customers).

²⁴ Regulated rivers are rivers where flows are regulated by dams and weirs as proclaimed by the New South Wales Government.

8 COMMUNITY ENGAGEMENT OBLIGATIONS

The terms of reference for this review require the Tribunal to recommend terms related to community engagement and consultation on the delivery of State Water's services. The Tribunal believes it is important that State Water keeps its customers and other stakeholders informed and enables them to provide input into how its delivery system is managed. Valley water distribution systems are typically unique to individual valleys. As customers in those valleys have a vested interest in maintaining and improving those systems they can provide advice on river asset management priorities, including infrastructure repairs and maintenance. Other stakeholders, such as environmental groups can also provide valuable input into State Water's operations.

In addition, the economic, social and environmental stakes for water delivery in rural areas are so high that it is important that stakeholders have access to information on the operational performance of State Water and its outlook for the future. State Water's activities can potentially have significant impacts on irrigators' operations, the amenity and viability of country towns and rurally based industries, and the environment.

State Water's Interim Operating Licence requires it to establish a State-wide Community Consultative Committee (CCC) and valley-based Customer Service Committees (CSCs). Membership of CSCs must include representatives from unregulated river and groundwater customers, as well as the relevant CMA. The Interim Licence also provides that State Water *may* establish local reference committees, when undertaking major upgrade projects.

The establishment of CSCs recognises that issues can be valley-specific. Water supply availability, systems and issues can also vary from region to region within the State. For instance, significant parts of southern NSW rely on the Snowy Mountains as the primary source of water, while much of northern NSW relies on floodwaters from Queensland.

The State-wide CCC is intended to provide a strategic forum for stakeholder engagement and address issues of common concern to a number of valleys and regions. Like any consultative committee, to be effective, it requires adequate information and engagement from State Water.

The Tribunal welcomes comments on:

- *the most effective form of community consultation*
- *appropriate components of CSC and CCC membership*
- *whether the State-wide CCC is an effective forum/vehicle for community consultation*
- *requirements related to community consultation that should be included in the Initial Operating Licence.*

9 PROVISIONS IN RELATION TO AUDITING THE OPERATING LICENCE

The Tribunal uses operational audits to monitor and report to the Government on an organisation's compliance with its operating licence. Such audits also serve to inform stakeholders and the community of an organisation's performance in a range of areas.

Under the Act, the Tribunal is required to prepare operational audits of State Water in accordance with the Operating Licence. The operating licence governs the frequency, scope and role of the audit.

There are several types of auditing and reporting models that could be implemented under State Water's Initial Operating Licence.

The operating licences of the Sydney Water Corporation (SWC) and the Sydney Catchment Authority (SCA) define the scope of operational audits, setting out parts of the licence that must be reviewed as part of each audit. However, recent water agency submissions to the Tribunal have questioned the value of such licence requirements. They argue that this lack of flexibility (a fixed audit scope, with all auditable requirements subject to scrutiny each year) is unnecessarily costly to their businesses.

Several submissions to the End of Term Review of SWC's Operating Licence advocated the use of a more targeted, risk management approach to auditing, as an alternative to the existing regime of annual comprehensive audits. This approach could involve high risk areas of the licence being subject to an annual independent audit, with lower risk or less critical areas monitored through self-reporting.²⁵

It may be, for instance, that the first operational audit of a new operating licence would need to be a comprehensive audit covering all aspects of the licence. Subsequent auditing and reporting arrangements could then be established based on the outcomes of this initial comprehensive audit. In making this assessment, the Tribunal could take into account a number of factors, including:

- levels of compliance achieved during the initial audit, where applicable;
- auditor recommendations as part of the initial audit; and
- the nature of the licence area and suitability of direct compliance reporting versus external audits.

²⁵ Factors considered by the Essential Services Commission (ESC) in assessing risk in the Victorian water industry include:

- Cost to customers or the public
- Danger to public health or safety
- Damage to property
- Loss or reduction of essential service
- Environmental damage
- Adverse public reaction.

The Tribunal seeks comments on the following:

- *The most appropriate auditing and reporting approach for State Water (eg, a broader-scope, fixed audit approach, or a risk management approach).*
- *The areas of State Water's operations that a more targeted audited approach should focus on.*

APPENDIX 1 TERMS OF REFERENCE

As directed by the Minister, the review of the Corporation's licence should be conducted per the following Terms of Reference:

1. The review of the Interim Licence should include recommending terms relating to:
 - a) provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for supplying water;
 - b) quality and performance standards for delivery of water, flood management and any other matters;
 - c) obligations in terms of customer service standards and guarantees;
 - d) obligations in terms of environmental performance;
 - e) maintenance of a comprehensive asset management system for all assets;
 - f) community engagement and consultation on the delivery of State Water's services;
 - g) the role, scope and funding of the audit and the reporting of the audit;
 - h) the processes, timeframes and other triggers for the review of the licence; and
 - i) any other matter considered appropriate.
2. The Tribunal is not required to include any terms that amend, substitute or modify the provisions of the *State Water Corporation Act 2004*.
3. The Tribunal is not required to include any terms that amend, substitute or modify provisions in the Initial Licence that relate to matters that ordinarily are within the regulatory activities of the Department of Environment and Conservation, the Department of Infrastructure Planning and Natural Resources or NSW Fisheries.
4. When developing its recommendations for the Initial Licence terms, the Tribunal must consult with relevant government agencies, expert advisers, other interested persons, and the general public.
5. When recommending the terms of the Initial Licence, the Tribunal must consider:
 - a) the objectives and functions of State Water Corporation as provided for in sections 5 and 6 of the *State Water Corporation Act 2004*;
 - b) the regulatory environment in which the Corporation operates;
 - c) the financial management framework within which the Corporation operates; and
 - d) the impact of quality and performance standards on the cost of service provision and on the water supply arrangements with customers (irrigators and country towns).

APPENDIX 2 INTERIM OPERATING LICENCE

**STATE WATER
INTERIM OPERATING LICENCE**

UNDER THE STATE WATER CORPORATION ACT 2004



New South Wales

STATE WATER CORPORATION ACT 2004

**INTERIM OPERATING LICENCE ISSUED UNDER
CLAUSE 12 (1) OF SCHEDULE 4 OF THE
STATE WATER CORPORATION ACT 2004**

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of clause 12 (1) of Schedule 4 of the *State Water Corporation Act 2004*, hereby issue the interim operating licence of State Water Corporation in the manner set out below.

Governor of New South Wales

Signed at Sydney, this 30th day of June 2004.

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1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Licence:

Act means the *State Water Corporation Act 2004* and any regulations in force under it.

Audit means the operational audit of State Water as defined in clause 10.1.1.

[Note: Area of Operations means the area of operations under section 15 of the Act.]

Authorised users mean the holders of basic rights and access licences under the *Water Management Act 2000* and *Water Act 1912*.

Bulk water means water delivered to meet the needs of the environment and authorised users.

Catchment Management Authority means those authorities listed in Schedule 1 of the *Catchment Management Authorities Act 2003*.

Commencement date means the date on which these terms and conditions of licence take effect.

Corporation means State Water Corporation constituted under the Act.

Customer means any person authorised under the *Water Management Act 2000* to take and use water and to whom State Water makes available water by the operation of any of its works or to whom State Water provides a service.

DEC means the Department of Environment and Conservation.

Delivery means operation of the Corporation's works for the purpose of making water available in a timely manner to Authorised users, Customers and the environment.

DIPNR means the Department of Infrastructure, Planning and Natural Resources.

Dispute Resolution Body means a reputable person possessing qualifications and experience in dispute resolution by way of mediation or otherwise and includes a person who carries out investigative functions in the nature of an ombudsman.

End of term review means the end of term review of the Initial Licence under clause 11.1.

Fisheries means NSW Fisheries as part of the Department of Primary Industries.

Functions include a power, authority or duty.

Infrastructure means those assets of State Water, including dams, regulators, locks weirs, diversion structures, banks, channels, cuttings, pipes and other structures, plant and

equipment devoted to the supply, regulation and distribution of regulated bulk water resources and structures on unregulated water resources.

IPART means the Independent Pricing and Regulatory Tribunal of NSW established under the *Independent Pricing and Regulatory Tribunal Act 1992*.

Licence means this interim operating licence granted under the Act to State Water or any amendment of it, and as in force for the time being.

Initial Licence means the operating licence to be granted under the Act to State Water following public consultation and within one year of the date of assent to the Act.

Licence Review Body means IPART or, if the Minister administering the *IPART Act 1992* directs IPART not to undertake the end of term review, a person (other than IPART, State Water or its Subsidiaries) who in the opinion of the Minister administering the *IPART Act 1992* has suitable qualifications and experience for undertaking the review.

Minister means the Minister responsible for administering those provisions of the Act relating to this Licence.

SOC Act means the *State Owned Corporations Act 1989*.

State Water means the State Water Corporation constituted as a corporation by the Act.

1.2 Interpretations

The following rules apply in interpreting this Licence, except where the content makes it clear a rule is not intended to apply.

- (a) Terms defined in the *State Water Corporation Act 2004*, *Water Act 1912* and *Water Management Act 2000* have the same meaning in this Licence, unless a contrary definition is specified in this Licence.
- (b) Whenever this Licence requires State Water to make something "available to the public", State Water must:
 - (i) publish the document on its Internet website and make it available to download free of charge;
 - (ii) make the document available at its offices for viewing by any person, free of charge; and
 - (iii) make the document available at its offices for collection by any person, for which State Water may charge a reasonable cost.

Explanatory Notes included in this Licence are marked in italics and do not form part of this Licence.

2. INFORMATION ABOUT THIS LICENCE

2.1 Purpose of Licence

[Note: This Licence has been issued for a maximum period of one year from the date of assent to the Act to allow sufficient time to develop and consult on the Initial Licence. Parts 10 and 11 of this Licence will not take effect until State Water's Initial Licence is issued by the Governor.]

2.1.1 The purpose of this Licence is to set out the terms and conditions under which State Water is to:

- (a) meet the objectives and other requirements imposed on it in the Act;
- (b) provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for capturing, storing and releasing water;
- (c) recognise the rights given to Customers by this Licence;
- (d) be subject to Audits of compliance with its Initial Licence;
- (e) undertake any of the Functions and powers of the Minister for Natural Resources under the Water Management Act 2000 or the Water Act 1912 set out in this Licence.

[Note: This Licence is granted pursuant to clause 12 (1) of Schedule 4 of the Act.]

2.2 Term of Licence

2.2.1 This Licence commences on 1 July 2004 and will cease to have effect on the granting of an Initial Licence under section 11 of the Act or one year after the date of assent to the Act.

2.3 Amendment of Licence

2.3.1 This Licence may be amended by the Governor in accordance with the Act.

2.4 Contravention of Licence

[Note: Section 16 of the Act provides that, where the Minister is of the opinion that State Water contravenes this Licence, the Minister may take action against State Water. Section 17 of the Act provides that where State Water knowingly contravenes this Licence, IPART may take action against State Water.]

2.5 Cancellation of Licence

2.5.1 This Licence may be cancelled by the Governor in the circumstances described in the Act.

[Note: Section 19 of the Act sets out the circumstances in which this Licence may be cancelled by the Governor.]

2.6 Availability of Licence

2.6.1 State Water must make this Licence available to the public.

3. FUNCTIONS AND AREA OF OPERATIONS

3.1 State Water Functions authorised by this Licence

3.1.1 The Act sets out the principal functions of the Corporation.

[Note: Section 6 of the Act specifies the principal functions of the Corporation as follows:

- (a) to capture and store water and to release water:
 - (i) to persons entitled to take the water, including release to regional towns, and*
 - (ii) for the purposes of flood management, and*
 - (iii) for any other lawful purpose, including the release of environmental water,**
- (b) to construct, maintain and operate water management works,*
- (c) any other functions conferred or imposed on it by the operating licence or by or under this or any other Act or law.]*

3.1.2 State Water is to seek water delivery efficiency through operational and Infrastructure improvements.

3.1.3 Subject to arrangements being entered into between the Minister for Energy and Utilities and the Minister for Natural Resources, State Water may exercise additional Functions under the *Water Management Act 2000*. These Functions include but are not limited to:

- lodging caveats on access licences under section 71E;
- granting consents to temporary water transfers under section 71M (4);
- debiting and crediting of water accounts under sections 76, 85 and 85A;
- suspending access licences under section 78 and suspending approvals under section 109;
- imposing a civil penalty under section 85B;
- imposing and recovering fees and charges under section 114;
- directing temporary water restrictions under section 323;
- issuing directions concerning the production of information under section 324, waste of water under section 325, and unusable water management works under section 330;
- issuing directions to protect water sources under section 326 and stop work where unlawful activity is occurring under section 327;
- issuing directions to holders of basic landholder rights under section 328;
- issuing directions for temporary stop work orders under section 329;
- ordering landholders to take specified measures to prevent damage to water management works by straying stock under section 331;
- taking remedial measures when a person fails to comply with directions from this Part under section 334;
- applying to the Land and Environment Court for an injunction under section 335;
- issuing certificates under section 362B;
- recovering fees, charges and civil penalties under sections 362A and 362C; and
- rights to the control, use and flow of all water in rivers and lakes under section 392 (1) (a). This power would be exercised only in regards to regulated rivers where a water sharing plan has been developed.

- 3.1.4 Subject to arrangements being entered into between the Minister for Energy and Utilities and the Minister for Natural Resources, State Water may exercise any Functions under Parts 2, 5 and 9 of the *Water Act 1912* including but not limited to:
- receiving water orders under section 20AF;
 - imposing and recovering charges in respect of any entitlement under the provisions of sections 22C, 117B or 194;
 - suspending any licence or authority under sections 22C (9) or 117B (8);
 - waiving or remitting charges under 22C (10) or 117B;
 - reading any meters required to be installed or maintained by any entitlement holder under the provisions of Part 2 (or any entitlement), Part 5 or Part 9. For this purpose employees, agents and contractors of State Water are authorised to exercise the powers of the Ministerial Corporation under sections 22 and 124 of the *Water Act 1912* and the powers of the Minister for Natural Resources under section 337 of the *Water Management Act 2000*;
 - approving or refusing temporary transfers under Division 4C of Part 2, including taking action under section 20XA.
- 3.1.5 State Water must operate its water management works consistent with any licences or approvals granted by the Minister for Natural Resources and must only release water from those works consistent with any relevant water management plan.
- 3.1.5 State Water must exercise any Functions and powers of the Minister for Natural Resources under the *Water Management Act 2000*, consistently with any relevant water management plan.

3.2 Powers not limited

- 3.2.1 This Licence does not restrict State Water's power to carry out any Functions conferred or imposed under any applicable law.

3.3 Operating Principles

- 3.3.1 In performing its Functions and providing its services State Water must:
- (a) manage the water resource in a sustainable manner;
 - (b) operate as efficiently as possible consistent with sound commercial practice;
 - (c) maximise economic, environmental and social benefits;
 - (d) minimise the adverse impacts of its activities on the environment;
 - (e) manage risk to ensure public safety, quality and security of supply;
 - (f) undertake continuous review, innovation and improvement;
 - (g) collaborate with agencies to take account of regional needs; and
 - (h) maximise conservation of water.

3.4 Operating Guidelines

- 3.4.1 State Water must take into account any policies or guidelines made and issued by the Government as required for the purposes of meeting its obligations under this Licence.

3.5 Area of Operations

- 3.5.1 State Water's Area of Operations may be varied in accordance with the Act, or to pursue any obligations under a contract.

[Note: From 1 January 2005 State Water will also operate the Fish River Water Supply Scheme within the meaning of Part 2 of Chapter 6 of the Water Management Act 2000.]

3.6 Non-Exclusive Licence

- 3.6.1 This Licence does not prohibit a person from supplying water (whether Bulk water or otherwise) to a person (including a person that is a Customer) in the Area of Operations, if it is lawful to do so.

4. CUSTOMERS & COMMUNITY ENGAGEMENT

4.1 Community Consultative Committee

- 4.1.1 State Water must establish and regularly consult with a statewide Community Consultative Committee (CCC) to enable community involvement in issues relevant to the performance of State Water's obligations under this Licence.
- 4.1.2 State Water must appoint the members of the CCC consistent with this Licence. The membership of the CCC must include a representative from at least each of the following:
- (a) Customers;
 - (b) environment groups;
 - (c) basic water right holders;
 - (d) regional business and consumer groups;
 - (e) Catchment Management Authorities; and
 - (f) local government.
- 4.1.3 The term of a member of the CCC will expire two years after his or her appointment. A member will be eligible for re-appointment for one further consecutive term.
- 4.1.4 State Water must provide the CCC with information within its possession or under its control necessary to enable it to discharge the tasks assigned to it, other than information or documents over which State Water or another person claims confidentiality or privilege.

4.2 Valley Based Customer Service Committees

4.2.1 State Water must establish and regularly consult with valley based Customer Service Committees (CSCs) to enable Customer involvement in issues relevant to the performance of State Water's obligations to Customers under this Licence. The membership of the CSCs must also include representatives from unregulated water Customers, groundwater Customers and the relevant Catchment Management Authority.

4.3 Local Reference Committees

When undertaking major upgrade projects, State Water may establish local reference committees to enable consultation specific to the project.

4.4 Customer Service Charter

4.4.1 Within six months of the Commencement date, in consultation with its CSCs, State Water must develop a Customer Service Charter. The Charter should detail the levels of service and mutual obligations of State Water and its Customers.

4.4.2 The Charter will set out Customer service standards and performance indicators. Indicators will include timely delivery of water to licensed Customers with allocations in response to orders placed with reasonable notice. The Charter will also include benchmarks consistent with the rights and obligations conferred under the *Water Management Act 2000* and any other law.

4.4.3 The Customer Service Charter must be made available to the public.

4.5 Code of practice and procedure on debt management

4.5.1 Within six months of the Commencement date, State Water must develop a code of practice and procedure on debt management (the 'Code').

4.5.2 The Code must:

- (a) provide for deferred payment or payment by instalment options; and
- (b) provide that the payment options referred to in (a) are to be advised in bills.

4.5.3 State Water must make the Code available to the public.

4.6 Customer Complaints

4.6.1 State Water must establish internal complaints handling procedures for receiving, responding to and resolving complaints it receives from Customers and the community, relating to any of its Functions.

4.6.2 The internal complaints handling procedures of State Water must be based on the Australian Standard *AS4269-1995 Complaint Handling*.

4.6.3 State Water must make these procedures available to the public.

- 4.6.4 State Water is to retain records on how complaints were resolved or why complaints were not resolved, as the case may be including any problems of a systemic nature arising from the complaints. State Water is to prepare annual reports on the following complaints categories:
- asset management including effects of unplanned outages;
 - water delivery operations including effects of unplanned deficits and surpluses;
 - billing including any qualifications on the accuracy of any bill;
 - the performance of staff regarding the discharge of their duties; and
 - lack of notification of allocations and access to supplementary water.

4.7 External Dispute Resolution Scheme

- 4.7.1 Within six months of the Commencement date, State Water must establish a Dispute Resolution Scheme (the Scheme) for a Dispute Resolution Body to resolve disputes between State Water and its Customers.
- 4.7.2 The Scheme established by State Water is subject to the Minister's approval.
- 4.7.3 The Dispute Resolution Body is to hear disputes and complaints made by Customers in relation to:
- (a) reliability of water supply;
 - (b) customer accounts; and
 - (c) communication of water availability and access notifications.
- 4.7.4 The Scheme must comply with the minimum standards, so far as applicable, specified in the Guidelines to the Prevention, Handling and Resolution of Disputes AS4608.
- 4.7.5 The Scheme must have the following features:
- (a) the decision-making process of the Dispute Resolution Body and administration of the Scheme is to be independent from State Water;
 - (b) State Water agrees to abide by the decisions of the Dispute Resolution Body in relation to disputes referred to it for resolution;
 - (c) the Scheme must adopt informal proceedings which discourage a legalistic adversarial approach;
 - (d) decisions of the Dispute Resolution Body should be fair and be seen to be fair, by observing the principles of procedural fairness, by making its decisions based upon the information before it, and by having specific criteria upon which its decisions are based; and
 - (e) the Scheme is to operate efficiently by keeping track of disputes referred to it; ensuring complaints are dealt with by the appropriate process and by the Dispute Resolution Body regularly reviewing the operation of the Scheme.
- 4.7.6 State Water must make the dispute resolution process available to the public.

- 4.7.7 Where considered appropriate by State Water and the Dispute Resolution Body, confidentiality arrangements are to be made so as not to disclose the Customer's identity in such reports.
- 4.7.8 State Water must report to IPART on information available to State Water and information reasonably obtained from the Dispute Resolution Body.

4.8 Complaints to other bodies

- 4.8.1 When requested, State Water must report to IPART on complaints made against State Water to a court or tribunal such as the Energy and Water Ombudsman NSW, (based on information reasonably obtained from these bodies and State Water itself as a party to the complaint).

5. ASSET MANAGEMENT

Under DIPNR's Water Management Works Approval(s), State Water will be provided with the necessary conditions to use its Infrastructure to access water for storage and delivery using river channels and other natural features.

5.1 Performance Standards

- 5.1.1 State Water's systems and services for delivering water must accord with performance standards to be developed by State Water, including but not limited to, the following areas:
- State Water must ensure its Infrastructure is constructed, maintained and operated to provide:
 - effective, efficient and commercially viable delivery of water allocated to Customers;
 - effective and efficient release of water allocated to the environment;
 - effective flood management;
 - public safety and employee safety;
 - dam safety risk as low as reasonably practicable;
 - compliance with total asset management standards.
- 5.1.2 Performance standards to be included in Schedule 1 of this Licence are not required to cover areas regulated by other statutory instruments.
- 5.1.3 Within four months of the Commencement date, State Water is to reach agreement with its Customers and other stakeholders on draft performance standards to be included in Schedule 1 of this Licence.

5.2 Total Asset Management Strategy

5.2.1 State Water must develop and implement a Total Asset Management Strategy, which:

- links to a broader Strategic Management Framework under which State Water's service objectives are documented and achieved by the most efficient means;
- covers the whole of life of assets;
- manages the risks of potential failure or reduced performance of assets; and
- is consistent with the principles of the Premier's Department's Strategic Management Framework and the NSW Government's Total Asset Management Strategy.

5.3 Augmentation of water management works

In considering any augmentation of water management works, State Water must consider as a priority any additional scope for cost-effective demand management strategies by Customers.

6. WATER DELIVERY OPERATIONS

6.1 State Water must take such steps as are reasonably practicable to conserve water and to minimise losses that result from its operations.

6.2 State Water must endeavour to manage its water release Functions and operations to ensure the timely availability of water taking into account physical supply constraints.

6.3 In periods of extreme resource shortage beyond drought of record as and when gazetted by DIPNR, a Drought Management Plan for river operations must be developed by State Water in accordance with DIPNR requirements.

7. THE ENVIRONMENT

State Water must conduct its operations in compliance with requirements of the *Water Management Act 2000*, the State Water Management Outcomes Plan and the Water Sharing Plans established under that Act.

7.1 Environment Management Plan

7.1.1 State Water must prepare an Environment Management Plan (EMP) which sets targets and timetables for compliance by State Water with those targets over the term of the five-year EMP. The initial EMP must be prepared by 1 July 2005.

7.1.2 The EMP must:

- (a) include a policy of the management of energy used by State Water for the performance of its Functions in accordance with this Licence;
- (b) apply appropriate targets of the NSW Government Energy Management Policy for energy consumption;

- (c) include indicators to measure the environmental impact of State Water's asset operations and maintenance.

7.1.3 The EMP must be made available to the public.

7.1.4 Amendments may only be made to the EMP following public consultation and the approval of the Minister.

8. PRICING

8.1 State Water must apply the level of fees, charges and other amounts payable for its services subject to the terms of this Licence, the Act and the maximum prices and methodologies for State Water's supply of water determined from time to time by IPART.

8.2 State Water is not to impose charges under section 29 (1) of the Act, save as to charges arising from any contract entered into under the Fish River Water Supply Scheme or any contract for the provision of services in respect of which IPART does not recommend a fee or charge.

8.3 State Water must report to IPART and NSW Treasury on the provision of its community service obligations.

9. MEMORANDA OF UNDERSTANDING

9.1 State Water is required to enter into and abide by agreements specified in Memorandum of Understanding (MoU) with each of the Directors-General of DEC, Fisheries and DIPNR for the term of this Licence. The MoUs are to be developed by 1 July 2005.

9.2 The purpose of the MoUs is to form the basis for cooperative relationships between the parties to the Memorandum.

9.3 The MoUs deal with issues such as how water quality and fish passage impacts of State Water operations are to be dealt with, information sharing arrangements and the making and announcement of available water determinations.

10. OPERATIONAL AUDITS

*[Note: **Part 10 does not apply to this Licence.** This Part will take effect once State Water's Initial Licence is issued by the Governor.]*

10.1 Commission of Operational Audits

10.1.1 IPART must initiate an Audit of State Water's operations as soon as practicable after State Water's Initial Licence has been in place for 12 months to cover the preceding year as required by this Part. IPART must undertake an Audit of State Water every two years thereafter.

- 10.1.2 The Audit must be conducted either by IPART or by a person IPART considers is suitably qualified to perform the Audit.
- 10.1.3 As part of the Audit, IPART must invite members of the public to make submissions. IPART may also undertake any other public consultation it considers appropriate.

10.2 What the Audit is to Report on

- 10.2.1 IPART may select specific priority areas for each Audit, for example:
- (a) compliance by State Water with its obligations under Part 4 of this Licence. This may include:
 - a. the effectiveness of its Community Consultative Committee and its valley based Customer Service Committees;
 - b. the effectiveness of State Water's Customer service standards and performance indicators as set out in its Customer Service Charter under clause 4.4.2;
 - (b) State Water's compliance with its code of practice and procedure on debt management under clause 4.5;
 - (c) the effectiveness of State Water's internal complaint handling process under clause 4.6.1 and external dispute resolution scheme under clause 4.7.1;
 - (d) complaints made against State Water to a court or tribunal under clause 4.8.1;
 - (e) State Water's compliance with its Total Asset Management Strategy under clause 5.2;
 - (f) compliance by State Water with its obligations under Part 7 of this Licence, including effectiveness of its environmental indicators;
 - (g) State Water's performance of its obligations under Memoranda of Understanding with other agencies;
 - (h) State Water's performance against standards to be specified in Schedule 1 of its Initial Licence;
 - (i) the effectiveness of performance standards to be set out in Schedule 1;
 - (j) any other matter required by the Minister.
- 10.2.2 IPART must not investigate a matter if the investigation of that matter is ordinarily within the regulatory activities of DEC, DIPNR or Fisheries and the relevant agency has undertaken or is undertaking an investigation of the matter.
- 10.2.3 IPART must ensure that, subject to clause 10.2.2, the report of the Audit advises the Minister on the following matters:
- (a) any failure of State Water to meet performance standards or any other requirements imposed on State Water under the Initial Licence;
 - (b) areas in which State Water's performance under the Initial Licence may be improved;
 - (c) any changes to the Initial Licence that IPART considers necessary;

- (d) any penalties or remedial action required as a result of State Water's performance under the Initial Licence;
- (e) whether the Minister should recommend that State Water's Initial Licence be cancelled by the Governor under the Act for reasons identified in the Audit report; and
- (f) any other matter relating to the Audit or IPART functions it considers appropriate.

10.3 Reporting of Audit

- 10.3.1 IPART must ensure that the Audit report is presented to the Minister within one month after its receipt by IPART, for the purpose of the Minister publicly releasing the report.
- 10.3.2 If the Audit report has identified areas of non-compliance with the Initial Licence, in addition to whatever other action is taken or required to be taken, State Water must comply with any requirement imposed on State Water by the Minister to do the following:
 - (a) advertise publicly and notify Customers of the areas in which its performance has not complied;
 - (b) provide reasons for the non-compliance; and
 - (c) identify the measures that will be taken by State Water to address the non-compliance.

10.4 Supplementary Audits

- 10.4.1 IPART must initiate supplementary audits of State Water if required by the Minister.
- 10.4.2 A supplementary audit may address one or more of the matters in clause 10.2.1 or any other matter required by the Minister.
- 10.4.3 The provisions of this Part applying to the Audit will apply equally to supplementary audits (all necessary changes having been made), to the extent those provisions are relevant.

10.5 Provision of Information

- 10.5.1 State Water must provide IPART with all information within its possession or under its control necessary to the conduct of the Audit or a supplementary audit, including whatever information is requested by IPART.
- 10.5.2 The information sought under clause 10.5.1 must be made available within a reasonable time of it being requested.
- 10.5.3 For the purposes of the Audit, on being required by IPART, State Water must, within a reasonable time permit IPART or its appointee to:
 - (a) have access to any works, premises or offices occupied by State Water;

- (b) carry out inspections, measurements and tests on, or in relation to, any such works, premises or offices;
- (c) take on to or into any such premises, works or offices any other persons or equipment as necessary for the purposes of performing the audit;
- (d) inspect and make copies of, and take extracts from, any books and records of State Water that are maintained in relation to the performance of State Water's obligations in accordance with this Licence; and
- (e) discuss matters relevant to the audit with State Water's employees.

10.5.4 If State Water contracts out any of its activities to third parties it must take all reasonable steps to ensure that, if required by IPART, any such third parties do things specified in this Part that extend to State Water as if that third party were State Water.

10.5.5 For the purpose of an Audit, the information to be provided by State Water or a third party under clause 10.5.1 will include information over which State Water or a third party claims confidentiality or privilege. IPART or the person appointed by IPART is required to enter into reasonable arrangements with State Water or such third party to ensure confidential information is kept confidential.

11 LICENCE REVIEW

*[Note: **Part 11 does not apply to this Licence.** This Part will take effect once State Water's Initial Licence is issued by the Governor.]*

11.1 An End of term review for the purpose of determining the terms of renewal of the Initial Licence is to commence on or about two years after its commencement date.

11.2 The review is to be undertaken by IPART, unless the Minister otherwise determines. The Licence Review Body must engage in public consultation as part of the review.

11.3 As part of the End of term review, the Licence Review Body must evaluate and report on the effectiveness of State Water's community consultation.

11.4 The Licence Review Body is to report to the Minister within 12 months of commencing the End of term review on the following:

- (a) the findings of the review;
- (b) any recommendations for amendment to this Licence, including any additional terms to be included in any renewal of this Licence; and
- (c) any recommendations for amendment to any law that adversely impacts on this Licence.

11.5 IPART must make the reports publicly available.

11.6 The Minister may accept or reject any recommendation made by IPART.

- 11.7 If any recommendation made by IPART and accepted by the Minister requires an amendment to this Licence, the recommendation is of no force or effect unless this Licence is relevantly amended in accordance with the Act. Any recommendation made by IPART that is not accepted by the Minister has no force or effect.

SCHEDULE 1
PERFORMANCE STANDARDS

State Water is to develop performance standards as specified in clause 5.1.2.

