



Department of  
**Infrastructure, Planning and Natural Resources**

**Office of the Director General**

Review of Operating Licence for State Water Corporation  
Independent Pricing and Regulations Tribunal  
PO Box Q290  
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DGC04/2011



Dear Ms Cullen

Please find attached the Department of Infrastructure, Planning and Natural Resources' comments on the Licence Review of State Water Corporation. Comments have been provided in line with the structure of the discussion paper. Where no clause reference is made the Department has no comment.

Yours sincerely

  
Jennifer Westacott  
Director General

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## DETAILED COMMENTS ON DISCUSSION PAPER

### 2. OVERVIEW OF STATE WATER

The report, in its fourth paragraph states “*customers who purchase water sourced from ‘regulated rivers’*”.

It is important that that it be understood that customers do NOT purchase water. Customers have a licensed right to water contained in their water accounts. Customers pay DIPNR a resource management fee and State Water a fee for the delivery thereof. NSW government has not privatised water nor does it sell water through either State Water or DIPNR.

The next sentence states “*These services (from State Water) include providing water allocations from dams, billing .....*”.

State Water does NOT provide allocations from dams. DIPNR allocates the state's water directly into customers' accounts – State Water then goes about its business of delivery each customer's water within the customer's desired timeframe and location. At no time does State Water own the water (it owns no water access licence) and therefore cannot provide water allocations from dams.

#### 2.1 State Water's Objectives

First paragraph – “*to operate in an efficient, effective.....*”

DIPNR wishes to point out that it is important to define what 'efficiency' is. It is recognised that most people will interpret this statement to mean that State Water should reduce 'losses'.

It needs to be understood that whereas DIPNR does not promote the notion that State Water should be inefficient in its deliver it is concerned that insufficient attention has been given to the fact that losses are not lost from the system. For example, seepage losses from regulated rivers in many areas form the only replenishment of groundwater, the natural flood replenishment having been all but negated due to the presence of the major dams. For this reason DIPNR is concerned that State Water, in pursuit of 'efficiency' for its regulated customers, does not further deplete the groundwater replenishment thus resulting in a transfer of resources from the groundwater users and groundwater dependent ecosystems.

Having said this, to the extent that 'efficiency' relates to an efficiently run business, DIPNR support the objective. That means that State Water should run the water delivery business that strives to minimise the cost to its customers within the constraints of quality of service.

#### 2.2 Functions

Two areas require comment in this paragraph:

Firstly, it should be made clear in the operating authority, that State Water, although being responsible for “the release of environmental water” it is not responsible for the calculation of how and when that water is to be released. This is the role of the environmental manager. Any confusion as to who is responsible for its management should be avoided.

Secondly, the second dot point states “*construct, maintain and operate water management works*”. In this regard it is considered that the Operating licence should also direct State Water to maintain and operate Government owned water assets on the

unregulated streams. By so doing this will avoid DIPNR having to be an asset manager in apparent competition with State Water.

### **2.2.1 Delegated Functions**

The Tribunal has asked:

***“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.”***

DIPNR believes that this is so, providing the licence more overtly delegates the function of asset management of water related infrastructure on the unregulated streams.

***“whether any of these functions should be exclusively conferred on State Water or confined in any way”***

DIPNR believes that, considering the interaction between DIPNR and State Water necessitated by the joint interest in the taking of water, that the Initial Operating Licence does not confer exclusivity. Exclusivity could be considered after an initial settling in period.

***whether the operating licence should address how the exercise of these functions is to be co-ordinated between State Water and DIPNR.***

DIPNR believes that the sharing of powers should initially be handled through an MOU between the two bodies. After an initial settling-in period any areas where clear demarcation is achieved could be inserted into a later licence.

### **2.2.2 Water Supply functions**

The Tribunal has asked:

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

DIPNR believes that the provisions for any body to operate a water supply system is adequately covered by the Water Management Act 2000 (WMA). State Water, as a corporate body, should simply be issued with the required WMA approvals to operate as such. Putting aside the issue of water pricing by a ‘major utility’, which is clearly an IPART issue, it would be inappropriate for SW to be regulated by both the Operating Licence and the conditions of approval to hold a ‘water utility’ water access licence. Furthermore, the functions of operating the Fish River versus the State’s dams are fundamentally different. Including the operation of the Fish scheme in this operating licence would create confusion and a great opportunity for duplication.

## **2.3 Areas of Operation**

DIPNR’s only comment here is that Snowy Hydro’s area of operation and those areas covered by the Irrigation Corporations should also be excluded.

## **3 REGULATORY FRAMEWORK**

DIPNR has no comment

#### **4 THE ROLE OF THE OPERATING LICENCE**

DIPNR believes that the Operating Licence should deal primarily with the business that it operates. It should avoid duplication of the requirements of the Water Management Works Approval. That is, since the WMWA will clearly codify the operation of the works in terms of rates and timing of water release from State Water storages, the Operating Licence should avoid specifying performance standards. Notwithstanding that there is still significant work to do to specify State Water's involvement in water quality (algae and cold water), it is expected that the Operating licence would not delve into this area. However, since DIPNR will have a small presence actually on the rivers and does not intend to daily police State Water's activities, DIPNR believes that the Operating Licence should mandate State Water providing information (both immediately and in its annual report), about any misdemeanours or breaches by State Water or its clients.

##### **4.2 Regulatory best practice**

It is noted that the Tribunal seeks that State Water's obligations are simply and unambiguously expressed.

DIPNR agrees with this in terms of expressing actually activities that it must perform. However, DIPNR believes that in the environmental area, both the Operating Licence and the works approval should avoid expressing environmental outcomes and relying on State Water to interpret what those outcomes are. To the greatest extent possible the actual actions required to achieve the outcome should be formulated and State Water's performance be measured against those actions. If the actions do not lead to the correct outcomes then the relevant instrument should be adjusted to achieve the outcomes sought.

To the greatest extent possible the licence should avoid putting State Water in the position of having to balance environmental outcomes – this is the job of the resource manager.

Having said this State Water should still be required to be mindful of the fact that it is operating in a natural environment and should be required to consult with the resource manager in any circumstance where a balance of competing outcomes is required.

#### **5. SYSTEM PERFORMANCE**

##### **5.1.2 Potential performance standards and indicators for State Water.**

The Tribunal has asked about performance standards:

*What baseline explanatory data should State Water be required to collect?*

DIPNR does not intend to comment on basic business matters. However, in regard to the fact that State Water replaces DIPNR's physical presence on the river, either the MOU with DIPNR or the Operating Licence should require State Water to collect statistics on the purpose to which the delivered water is put. These are commonly referred to as 'crop statistics' and are required to enable proper hydrologic modelling to be carried out as well as to help inform the water market and other statistical bodies such as ABS and the ABARE. State Water is aware of this requirement and performs it well in a number of valleys already.

This also holds for the requirements for State Water to record all water transfers and water use.

*What water conservation indicators or standards should State Water be subject to?*  
See section 2.1 dealing with State Water Objectives.

*What are suitable indicators for assessing and reporting State Water's compliance with Water Sharing Plans and Water Supply Work Approvals?*

With regard to Water Sharing Plans, State Water should be required to report any non-compliance with a plan by either its own actions or the actions of the clients it serves. Since the Minister for Natural Resources is required to report annually on the implementation of Water Sharing Plans via the DIPNR Annual Report, DIPNR would see State Water's requirement to report under its Operating Licence as a ready source of material to assist the Minister in meeting his obligation.

In regard to the Works Approval, DIPNR believes that State Water should be required to report on Works Approval matters as defined in the approval itself. DIPNR believes that those reporting requirements should not be duplicated and double regulated by the Operating Licence.

*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.)*

State Water's operations are really quite simple – it releases water from its storages to meet certain demands according to certain rules and within certain constraints. Once the water has been release from storage, generally neither State Water nor DIPNR has control of the outcomes.

For this reason DIPNR believes that, if State Water has complied with its release obligations, as articulated in its works approval, it should be, from there on, relieved of any responsibility for the water quality outcomes until it once again enters another of its storages or weirs.

State Water's responsibility therefore is confined to two areas:

- 1) Since State Water regulates the visitation and recreation on its storages, State Water has a common law requirement to ensure that it informs its visitors of the risks while they do so. (DIPNR has the same responsibility for the natural streams.)
- 2) State Water has a responsibility to release water according to any water quality considerations demanded in its works approval.

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

*No. DIPNR believes that would constitute unnecessary duplication, as State Water will be required under its works approval to monitor its compliance with the approval.*

*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.)*

*No. The Tribunal should note that these functions are intended to be covered by contract not delegation. DIPNR believes that performance should be covered by the contract entered into between the two entities. Considering that DIPNR intends to move both of these functions to a more automated system the contract will be only short term.*

*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?*

DIPNR has no comment on State Water's customer service or community engagement. DIPNR believes that in regard to environmental obligations the Operating Licence should merely reinforce that State Water is subject to the provisions of the E P&A Act as it goes about its day to day operations. The Operating Licence should not infer any environmental obligation in regard to water sharing. On the contrary the Operating Licence should oblige State Water to consult with the Resource Manager before it undertakes any significant work or action that might change the water shares as defined by the Water Sharing Plan.

### **Table 1. Potential Performance Standards**

Comments on particular items:

- *Actual flows to environment versus natural.*

This comparison can only be made using DIPNR water models. Since State Water is not responsible for environmental outcomes, only following the rules that it is given in its works approval, it is not reasonable nor relevant that State Water should be required to report on this. This is the responsibility of the Catchment Management Authority.

- *Cold water pollution*

In order for State Water to demonstrate to DIPNR that it has complied with its obligation under its works approval (where multi-level off-takes exist) State Water will have to measure temperature at various depths and report them to DIPNR. To require the same from the Operating Licence would generate unnecessary duplication.

- *Water Quality instream downstream*

DIPNR is responsible for water quality in the natural environment not State Water. It is not appropriate for State Water to be required to report on this.

- *Compliance with WSPs etc*

It is intended that the requirement of water sharing plans be codified into the works approvals. Therefore, other than a general statement in its annual report that it has or has not complied with the general provisions of a WSP, State Water's compliance with the requirements of the works approval to DIPNR should be sufficient.

- *Instream erosion etc.*

DIPNR believes that State Water's obligations are met when it complies with its release rules. Any resultant erosion is an expected outcome of that compliance. However, in view of State Water greater presence on the rivers, State Water should be expected to be vigilant of any resultant erosion and bring it to the attention of the resource manager.

If it is considered by the resource manager to be an issue he/she will alter the conditions of the works approval to mitigate the erosion.

Notwithstanding this, localised erosion in close proximity to State Water structures is clearly associated with the structure itself and State Water should be accountable for minimising the impact.

The Operating Licence could therefore require two things of State Water. Firstly to be vigilant of erosion incidences and report same to DIPNR; and secondly, to minimise erosion in the vicinity of its own structures. Alternatively both of these requirements could be included in its works approval or the MOU with DIPNR.

## **5.2 Asset Management**

DIPNR has no issues with the contents of the discussion paper on asset management.

However, there is an important related issue regarding asset management on unregulated streams. DIPNR is of the view that it would be inefficient to have State Water responsible for water assets on regulated streams and DIPNR responsible for water assets on unregulated streams. It would be equally inefficient to have DIPNR responsible for the unregulated assets seeking income from Treasury for their maintenance and contracting State Water for the actual maintenance.

DIPNR is of the view that State Water Operating Licence should be expanded to vest ownership and accountability of unregulated water assets with State Water.

By so doing the DIPNR will be relieved from acting as the 'middle man' between the maintenance and the funding. DIPNR will not be required to develop experience in asset management, and more importantly, in State Water's hands, any community service obligation will be overtly reported in its balance sheets.

Furthermore, State Water will have all the required 'drivers' to either find an owner and divest that asset, remove the asset, or continue its maintenance under an approved CSO arrangement.

## **6. ENVIRONMENTAL OBLIGATIONS**

DIPNR's comments are generally contained above.

The tribunal has asked "*whether any terms or conditions included in these MoUs should be included as an obligation in State Water's Initial Operating Licence.*"

DIPNR believes that the MOU represents an agreed working relationship between the two organisations. DIPNR believes that it would be unwieldy to duplicate such conditions in the Licence for fear that should the organisations agree to operate differently over time for a variety of efficiency or business reasons, it would necessitate the change of the Licence.

Having said this it is important that the Operating Licence mention the MOU (without details) and give weight to the need for State Water to comply with the MOU.

## **7. CUSTOMER SERVICE**

7.1 No comment

7.2 The tribunal has asked about "*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?)*

IT is DIPNR's intention that it does not duplicate the actions of State Water in regard to regulated customers. It is generally agreed that State Water alone has responsibility for regulated customers in respect of compliance. However, since DIPNR issues the licence it is only appropriate that the cancellation of the licence is DIPNR's responsibility. Notwithstanding this it is appropriate that State Water be empowered to take all necessary action to enforce compliance through monetary penalties, water penalties or licence suspension. This is similar to the relationship between police and the RTA in respect of licences.

It is intended that the MOU would require both organisations to inform the other on any action taken against any licence or work.

- *operating the Fish River water supply scheme.*

DIPNR can no conflict of interest in State Water managing this scheme by virtue of the fact that it lies in an unregulated river. However, it is worth while pointing out that caution should be exercised in any attempt to expand State Water operations to include any equivalent major water utility with the regulated rivers. This would constitute a conflict of interest with State Water effectively supplying them selves with water. This would not pass the separation model of regulator, supplier and consumer.

DIPNR would like to reiterate here that the Operating Licence cannot authorise the running of the Fish River Scheme. Whereas the Operating Licence can authorise State Water to apply for an approval as a major water utility, its legal operation is only authorised by the granting (by the Natural Resource Minister) of a 'major utility access licence' and its subsequent entry into Schedule 2 of the Water Management Act 2000. The requirements for such an approval are covered under Chapter 6 of the Water Management Act 2000.

DIPNR believes that if IPART is to regulate State Water as a major utility it should be done separately from its Operating Licence in respect of its responsibility to operate the State's water infrastructure. By way of comparison the Tribunal might note that Sydney Water Corp and Sydney Catchment Authority are separately regulated. So too should State Water be separately regulated for the two fundamentally different operations it performs.

The tribunal has asked "*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).*"

DIPNR believes that the provision of such services is a contract relationship between the two organisations. DIPNR believes that it would be unwieldy to prescribe that relationship in the Licence for fear that should the organisations agree to operate differently over time for a variety of efficiency or business reasons, it would necessitate the change of the Licence.

Providing the Act or 'Statement of corporate Intent' authorises State Water to enter into contracts for the provision of service no mention is necessary in the Operating Licence

## **8. COMMUNITY ENGAGEMENT**



DIPNR has no comment.

## **9 AUDIT**

Audits are time consuming activities and can be very disruptive of State Water and take it resources away from its fundamental purpose. DIPNR supports a risk management approach to audit, in which State Water is audited on the major activities associated with its primary objectives. Random audits into the future could be focussed in the minor matters of its business.

In certain areas auditing inputs would be more valuable than outputs or outcomes. For example, in the customer compliance area no amount of effort will unearth collusion to defraud. Better to focus on " have all customer service officers been trained on fraud, on the requirements of the Act and has random cross checking been instigated".