

# **STATE WATER CORPORATION**

## **Response to the IPART Issues Paper on the Review of the Operating Licence for State Water Corporation**

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***Submitted to:***

The Review of Operating Licence for State Water Corporation  
Independent Pricing and Regulatory Tribunal  
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## TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION .....</b>	<b>4</b>
1.1	State Water’s objectives.....	4
<b>2</b>	<b>OVERVIEW OF STATE WATER.....</b>	<b>5</b>
2.1	Delegated Functions .....	5
2.2	Water supply functions .....	11
<b>3</b>	<b>REGULATORY FRAMEWORK.....</b>	<b>11</b>
<b>4</b>	<b>THE ROLE OF THE OPERATING LICENCE .....</b>	<b>12</b>
4.1	Statutory Requirements.....	12
4.2	Regulatory best practice.....	12
<b>5</b>	<b>SYSTEM PERFORMANCE.....</b>	<b>20</b>
5.1	Obligations to meet performance standards and monitor performance indicators...	20
5.2	Obligations to develop and implement asset management strategies .....	22
<b>6</b>	<b>ENVIRONMENTAL OBLIGATIONS .....</b>	<b>23</b>
6.1	Augmenting the broader regulatory framework .....	23
6.2	Stipulating requirements for development of Environmental Management Plan....	24
6.3	Ensuring appropriate environmental performance obligations .....	25
<b>7</b>	<b>CUSTOMER SERVICE OBLIGATIONS .....</b>	<b>25</b>
7.1	Key Service Issues for Customers.....	25
7.2	The relationship between State Water and its customers .....	26
<b>8</b>	<b>COMMUNITY ENGAGEMENT OBLIGATIONS.....</b>	<b>27</b>
<b>9</b>	<b>PROVISIONS IN RELATION TO AUDITING THE OPERATING LICENCE .....</b>	<b>30</b>
<b>10</b>	<b>APPENDIX 1 - COMMENTS ON SPECIFIC INTERIM OPERATING LICENCE CONDITIONS: .....</b>	<b>31</b>
<b>11</b>	<b>APPENDIX 2 – SEPARATION OF POWERS AND FUNCTIONS.....</b>	<b>33</b>
<b>12</b>	<b>APPENDIX 3 - PERFORMANCE STANDARDS PROPOSED BY STATE WATER .....</b>	<b>40</b>

# **1 INTRODUCTION**

## **1.1 State Water's objectives**

### **State Water's initial comments:**

**Clause 5 of the State Water Corporation Act (SWCA2004)** provides a number of objectives for the Corporation.

- (1) The principal objectives of the Corporation are to *capture, store and release water* in and efficient, effective, safe and financially responsible manner.
- (2) The other objectives of the Corporation are as follows:
  - (a) *to be a successful business* and, to that end:
    - (i) *to operate at least as efficiently as any comparable business*, and
    - (ii) *to maximise the net worth of the State's investment in the Corporation*,
  - (b) *to exhibit a sense of social responsibility* by having regard to the interests of the community in which it operates,
  - (c) 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*,
  - (d) *to exhibit a sense of responsibility towards regional development and decentralisation* in the way in which it operates.
- (3) The other objectives of the Corporation are of equal importance, but are not as important as the principal objectives of the Corporation.
- (4) Section 20E of the *State Owned Corporations Act 1989* does not apply to the Corporation.

**Clause 6 of the SWCA2004** provides for the principal functions of the Corporation, which include the capture, storage and release of water, the construction, maintenance and operation of water management works and any functions conferred or imposed on the Corporation by the operating licence or by or under the proposed Act or any other Act or law.

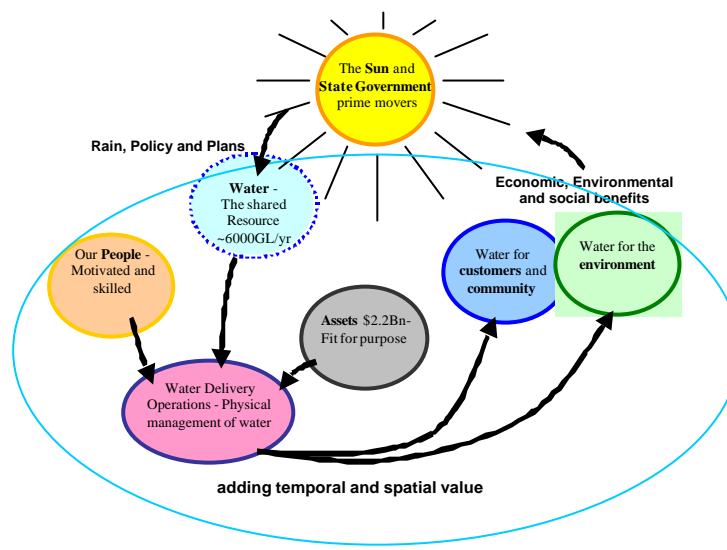
- (1) The principal functions of the Corporation are as follows:
  - (a) to capture and store water and to release water:
    - (i) to persons entitled to take the water, including release to regional towns, and
    - (ii) for the purposes of flood management, and
    - (iii) for any other lawful purpose, 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.
- (2) The Corporation may:
  - (a) provide facilities or services that are necessary, ancillary or incidental to its principal functions, and
  - (b) conduct any business or activity (whether or not related to its principal functions) that it considers will further its objectives.
- (3) The exercise by the Corporation of any of its functions is subject to the operating

licence and any applicable requirements under the *Water Management Act 2000* or the *Water Act 1912*.

The Corporation also has certain ancillary functions. The exercise by the Corporation of any of its functions is subject to the operating licence and any requirements under the *Water Management Act 2000* (WMA2000) or the *Water Act 1912*.

In addition, State Water has commercial objectives derived from the *State Owned Corporations Act 1992*, Commercial Policy Framework, and State Water’s Corporate Plan.

Figure 1 depicts State Water’s operating environment.



State Water as a bulk water delivery business adds value by delivering the water allocated to customers and the environment, in accordance with available resource, Water Sharing Plans and all relevant legislative and statutory instruments.

## 2 OVERVIEW OF STATE WATER

### 2.1 Delegated Functions

*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 coordinated between State Water and DIPNR.*

**State Water Response:**

**Review of the Operating Licence for State Water Corporation – State Water Response**

The *Water Management Act (WMA2000)* does not address the separation of regulatory and operational roles. The resulting problems are not insurmountable, as the Minister administering the *WMA2000* may delegate functions to State Water, with or without constraints, sufficient to allow it to operate as a commercial business. This will however require a clear understanding of accountabilities and a cooperative approach among agencies.

*WMA2000* **enables** both *regulatory powers* as well as *operational powers*. *WMA2000* **empowers** the Minister for Natural Resources with both these powers, to be exercised over the Access Licences and Works Approvals, which are created under the *WMA2000*. For State Water to operate, the Minister for Natural Resources needs to delegate some powers to it.

The only link between the water user customer, the regulator and the operator is the Access Licence, which is solely an instrument of the *WMA2000*. In issuing an Access Licence, DIPNR creates the State Water Customer (extractive licence or environmental licence). Therefore, even though the *State Water Corporation Act 2004* empowers State Water to impose fees and charges for its services, it can only invoice the Access Licence holder to whom it has delivered water in accordance with the Access Licence created by DIPNR.

Any interaction between State Water and the Access Licence holder is therefore through the Access Licence that is within the purview of the Minister for Natural Resources. For State Water to suspend an Access Licence for non-payment or a breach of licence conditions, it requires some of the powers (conferred or delegated) of the Minister for Natural Resources.

Where the ultimate accountability rests with the Minister for Natural Resources, the powers may be *delegated* by that Minister to State Water, whereas if the accountability is to rest with the Corporation, the powers should be *conferred* on State Water by legislation.

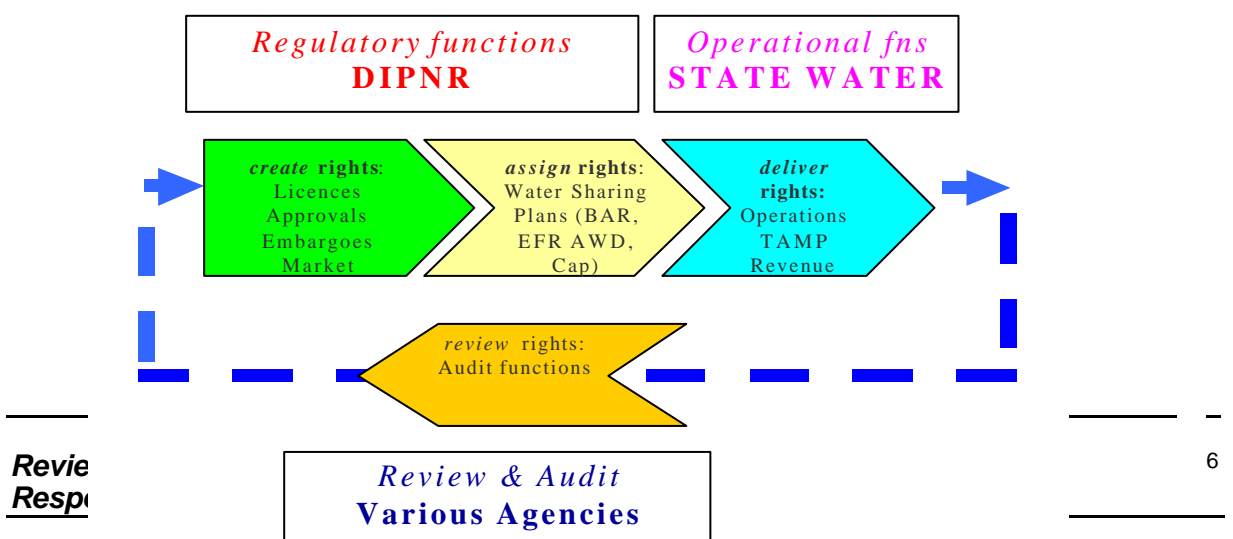
Other utilities have a **Customer Contract** that effectively establishes the relationship between the supplier and the customer. State Water currently has no such instrument.

The following 4 points are important to consider in addressing the 3 issues raised:

**Separation of Functions of Operator and Regulator:**

State Water must have additional powers necessary to carry out its water delivery functions under the *SWCA2004*. While the Act specifies these powers and functions at a high level, the express power to deliver against the functions needs to be given to State Water.

**Figure 2 - How the functions should be separated based on an analysis of water rights**



As the operator, State Water has the delegation and is accountable for operational functions (asset management, water delivery, customer service and commercial services), carried out to the specification of the Regulators. Without the power to exercise these business critical functions, State Water’s objectives and outcomes would be compromised.

**Figure 3 – Managing the interface between DIPNR and State Water**

<b>DIPNR</b>	Provides water for environment and creates property rights	1. <i>Water Management Act 2000</i>	Allows SW to deliver water to all authorised users	<b>STATE WATER</b>
	Provided input to functions and powers	2. <i>State Water Corporation Act 2004</i>	Allows SW to deliver services, exercise powers	
	Input to Operating Licence conditions	3. Operating Licence (OL)	SW must operate to OL conditions	
	Sets shares and codifies access to water	4. Water Sharing Plans (WSP)	SW manages and administers system as per WSP	
	Codify rules for operation of system	5. Implementation Manuals (IM)	SW must operate to rules set in the IM	
	Issues Works Approvals for existing use	6. Works Approvals (WA)	Allows SW to use its structures to regulate flow	
	Encourages cooperation for mutual benefit	7. Memorandum of Understanding	Encourages cooperation for mutual benefit	
	Exchange of services under contract	8. Contracts	Exchange of services under contract	

As the natural resource regulator, DIPNR should only be accountable for regulatory functions (policy, strategy, planning), determining the balance between water resource use and conservation. If DIPNR is accountable for flow measurement, and State Water’s performance is compromised through poor flow measurement, State Water cannot be held accountable for non-compliance or poor performance.

State Water’s operational effectiveness and its performance in delivering water are measured by target flows and volumes. Therefore State Water must be empowered to undertake *flow measurement* for river operations, if it is to be accountable and auditable for this business critical function. *Water usage measurement* and *reporting* are functions that State Water carries out effectively and efficiently.

Equally importantly, State Water must **not** be empowered with any regulatory powers, in accordance with the separation principles. State Water must be enabled however to enforce compliance with its operational requirements for water ordering, extraction, metering, transfers, payments and site safety.

The following table shows the business critical functions for State Water and the allocation of functions to achieve clear accountability and best outcome:

<i>FUNCTION</i>	<i>ACCOUNTABILITY</i>
<b>I. Asset Management</b>	
1) Asset Ownership	SW must own, operate and maintain all bulk water delivery assets. This includes all flow management works, whether for extractive or diversion purposes, on regulated river systems. SW to manage unregulated and groundwater assets under contract to DIPNR.
2) Total Asset Management Planning	SW accountability for Lifecycle Management Planning and Implementation (investigations, designs, project management, construction, O&M, MPM, Replacement, Disposal)
3) Asset Operations	SW must operate its assets.
4) Routine O&M Activity	SW carries out all routine operation and maintenance and surveillance activities.
5) Renewals Activity: MPM, rehabilitation and replacement	SW to carry out renewals activity.
6) Compliance upgrades for dam Safety, OHS, Environmental needs.	SW accountable for asset compliance with all statutory requirements (DSC, ANCOLD, OHS) as well as levels of service and environmental needs in accordance with Risk Management Strategy.
7) Enhancements/ Developments	SW is responsible for managing asset enhancement/development projects, in consultation with stakeholders.
8) NSW Constructing Authority for MDBC	State Water replaced Water Administration Ministerial Corporation as the Constructing Authority under the <i>SWCA2004</i> . All functions and roles of Constructing Authority must be transferred from DIPNR to State Water.
<b>II. Water Operations</b>	
9) Flow Monitoring	<b>After the interim 12 month arrangement.</b> State Water must be accountable as owner- operator of Surface Water Flow Monitoring Network. Data to be made available to DIPNR and the public.
10) Water Operations Planning	SW accountability to develop and implement Operations Plan.
11) Resource Assessment	SW accountability to prepare assessment statement and submit to DIPNR
12) Allocation Enhancements or AWD increments	DIPNR accountability to make the <b>decision</b> within 5 working days of the Resource Assessment. State Water to update the <b>Register</b> .
13) Allocation or AWD Announcements	SW accountability to advise customers through media, internet, email, faxstream, IVR telephones, SMS
14) Off-Allocation (Supplementary Water) Availability	SW accountability to assess Off-allocation availability in accordance with rules.



<i><b>FUNCTION</b></i>	<i><b>ACCOUNTABILITY</b></i>
15) Management of Allocated Water	SW accountability to manage and deliver the allocated water to customers.
16) Water Order Mgmt	SW accountability to manage Water Orders to ensure access to water to all users.
17) Water Usage/ extraction monitoring	SW accountability to monitor Water Usage/ extraction in all regulated systems.
18) Carry-over Mgmt	SW accountability to manage Carry-overs, consistent with WSPs to enable customers to maximise efficient use of water.
19) Demand Management	SW accountability to manage Demand to ensure equitable delivery of water when physical supply constraints occur or are likely to occur.
20) Bulk water transfers	SW accountability - In accordance with WSP, water can be transferred between dams and from dams to weir pools to enable efficient water delivery.
21) Drought Contingency Planning	DIPNR to declare "Drought". In periods of extreme resource shortage beyond drought of record, a Drought Contingency Plan must be developed <b>jointly</b> by DIPNR and State Water.
22) Flood Operations	SW accountability. Flood operations must be consistent with Flood Operations Plans and Manuals.
23) Hunter River Salinity Trading Scheme Operations	SW accountability to manage and operate DEC's Hunter River Salinity Trading Scheme(HRSTS).
24) Storages Water Quality	DIPNR accountability for NSW WQ <b>Management</b> Program. SW to maintain a Storages Water Quality <b>Monitoring</b> Program as required under Works Approval.
<b>III. Customer Service</b>	
25) Customer Water Account Management	SW accountability to manage Water Accounts for all regulated systems, using its <b>Water Ordering and Usage System</b> .
26) Temporary Water Transfers (Allocation Assignments)	SW accountability to process <b>intra-valley</b> temporary transfers quickly and efficiently, in accordance with WSP. <b>Inter-valley and Inter-State</b> transfers to be approved by DIPNR.
27) Licence Administration	DIPNR accountability to administer Licensing and maintain database. <i>This could easily be contracted to State Water</i>
28) Compliance and enforcement	DIPNR sole accountability for <b>Cancellation or Prosecution</b> Action on Access Licences. SW power to <b>suspend</b> licences for overuse/non payment.
29) Permanent Water Transfers	DIPNR accountability. <i>This could easily be contracted to State Water.</i>
30) Customer billing and debt management	SW accountability for all regulated water sources. SW to undertake on unregulated and groundwater sources, under contract to DIPNR
31) Customer Service Committees	SW accountability. CSCs to include unregulated and Groundwater customer representatives.
32) Customer Notification	SW accountability to notify customers on all water delivery issues.

Ideally, the **review** of both *regulatory* and *operational* performance should be the accountability of an independent agency, or at least be independently assessed. DIPNR, the Resource Manager is the current review body and is therefore not independent. State Water recommends that the accountability for overall review of *regulatory* performance may be vested with the Natural Resources Commission (NRC).

### **Effectiveness and Cost Efficiency:**

If a function is difficult to define as operational or regulatory, whoever is **best** able to carry out this function should be allocated the responsibility for the function. Accountability should be maintained with the regulator or operator as appropriate. State Water's track record in managing operational functions and delivering outcomes in the area of water operations, asset management, and billing should be taken into account. All operational functions should be transferred to State Water based on its demonstrated track record of delivering cost effectively and efficiently.

### **Risk Management Competency and Incentives/Drivers :**

If there are significant risks or benefits associated with the function, whoever has the relevant competency to manage the risks or whoever has the greatest incentive to achieve the benefits should be assigned this function. State Water has competencies in asset management, real-time operations and a very high incentive to maximise the delivery of water to its customers. If the function is carried out by an agency that lacks this incentive, it will result in delays or reductions in access to water for customers.

State Water believes that Asset Management Risk, Operational Risk, Business Risk, Environmental Risk, OH&S Risks, Public Liability Risk associated with bulk water delivery should be the responsibility of State Water.

### **Consistency with government policy and functional review:**

The recommendations of the State Water Business Review undertaken by Pacific Road Finance Consultants, as well as the determinations of the Corporatisation Steering Committee specify that functions that are operational and administrative in nature should be vested with the Operator.

With these points in mind, State Water's comments are:

1. The business critical operational functions should be conferred to State Water, as per **Appendix 2** on Page 26. The sharing of functions has been designed to avoid confusion and lack of accountability.
2. The administration of regulated river Access Licences and Works Approvals, Licence Administration System (LAS) should be transferred to State Water. The performance criteria for auditing LAS administrative tasks can be easily defined, as the regulatory and planning framework is now set.
3. The Operating Licence (OL) should address the coordinated exercise of functions between DIPNR and State Water. This should be done through performance measures on each agency relating to the relevant task or function. State Water recommends that either IPART or the Natural Resources Commission (NRC) be vested with this accountability.

## 2.2 Water supply functions

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

### State Water Response:

The operation and status of Fish River Water Supply Authority (FRWSA) is distinctly different to State Water's bulk water delivery business. FRWSA is mostly a retail water business operation, supplying treated water to 6 customers. FRWSA has a Water Management Licence, an Access Licence and a Works Approval. These instruments regulate the access to water and operations of FRWSA, in accordance with *WMA2000*.

The OL needs to allow State Water to operate and manage FRWSA as a discrete business without cross subsidies between bulk water supply business and retail water supply. State Water does not see the need for the OL to address operational aspects of FRWSA as operational issues and prices are negotiated with the customers and set by the Minister, in accordance with the *WMA2000*.

Any exchange of services between State Water and FRWSA will be under contract.

## **3 REGULATORY FRAMEWORK**

IPART did not seek comment on the regulatory framework. However, the response to Chapter 4 addresses the regulatory framework issues.

## 4 THE ROLE OF THE OPERATING LICENCE

### 4.1 Statutory Requirements

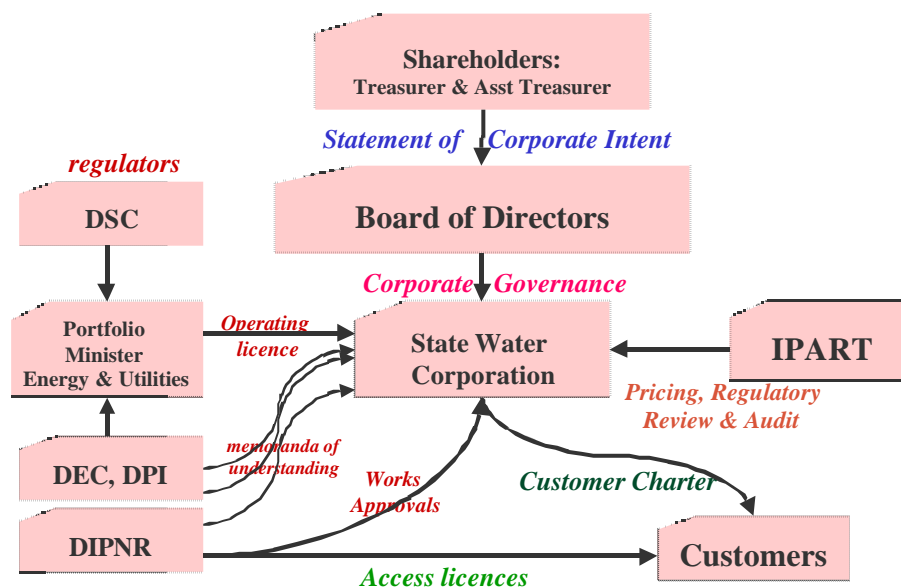
### 4.2 Regulatory best practice

*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.*

#### State Water Response:

The main statutory and regulatory instruments applicable to State Water Corporation's operations are the *State Water Corporation Act 2004*, *State Owned Corporations Act 1989*, *Water Act 1912*, *Water Management Act 2000*, Operating Licence, Customer Charter, Water Sharing Plans (WSP), Water Implementation Program, and Water Management Works Approvals. The last three are specific to each regulated valley system.

Figure 4 - State Water's key relationships



The Operating Licence is issued by the Portfolio Minister (Minister for Energy, Utilities and Sustainability) to enable State Water to operate in a manner that provides **consumer protection** and **protection of the State's assets**. The Operating Licence will provide a set of appropriate measures and indicators by which State Water's **conformance** can be assessed **objectively**. (similarly, the Statement of Corporate Intent provides a set of appropriate measures and indicators by which State Water's **performance** can be assessed **subjectively**).

Regulation of a State Owned Corporation is complex and in the case of State Water it is made more difficult due to its vicarious powers over Water Access Licences through the *WMA2000*. In this situation, regulation of State Water needs to be examined for both *regulatory* functions as well as *auditory* and *review* functions. State Water proposes that the following arrangement would be most constructive.

**Figure 5 - Regulation and Audit of State Water's Key Areas of Operation**

REGULATORS		State Water	AUDITORS & REVIEWERS
DIPNR DEC, DPI	<i>WMA2000, EP&amp;AA, FMA</i>	<i>Water Delivery Operations</i>	DIPNR on behalf of all Agencies
Dams Safety Committee (DSC)	<i>Dams Safety Act 1978</i>	<i>Dam Safety</i>	IPART on behalf of portfolio Minister
Govt Asset Mgmt Committee (GAMC)	<i>GAM Policy</i>	<i>Asset Management</i>	IPART on behalf of portfolio Minister
IPART	<i>IPART Act 1992</i>	<i>Water charges</i>	IPART on behalf of portfolio Minister
Portfolio Minister	<i>SWCA2004</i>	<i>Customer Service</i>	IPART on behalf of portfolio Minister
Portfolio Minister, Shareholders	<i>SWCA2004 PA&amp;FA</i>	<i>Business Operations</i>	NSW Audit Office

The *SWCA2004* provides for an independent pricing regulator to protect consumers in the setting of prices for delivery of services by a natural monopoly. The Government through the *IPART Act 1992* provides for IPART to determine water prices.

The *Dams Safety Act 1978 (DSC1978)* and the *SWCA2004* both require State Water to manage its assets to minimise risk exposure to the community for all failure modes.

In addition to the government's decision to nominate IPART as the pricing regulator, the Portfolio Minister has also nominated IPART to audit and review State Water's conformance with the Operating Licence. The Operating Licence requires State Water to develop performance measures and indicators to use in the audit and review, to cover the requirements of all relevant statutory and regulatory requirements, in consultation with stakeholders.

The exception is that the direct audit and review of State Water's compliance with Water Sharing Plans is carried out by DIPNR. The roles and relationships of DEUS, DEC and DPI are to be determined through consultation and the proposed MOUs. State Water prefers that DSC, DEUS, DEC and DPI not play a direct regulatory role for the purpose

As a monopoly business, State Water operates in a highly regulated environment, which is closely scrutinised by Government agencies, the water users, the community and people with environmental interests.

The need clearly exists for a “light handed” regulatory framework that is comprehensive without duplication, efficient, realistic, measurable and stretches State Water to improve performance without being excessively onerous. Therefore the performance measures and indicators for State Water must:

1. be relevant to functions and operations that State Water is **solely** and **legally** accountable for under the regulatory framework;
2. influence the outcome independent of other parties;
3. substantially achieve outcomes in the period between audits (to be measurable and useful);
4. lead to improved performance by State Water;
5. be cost effective, ie the cost of compliance does not outweigh the benefits;
6. are specific and measurable with current or planned processes; and
7. are consistent with water industry standards and practice.

It is imperative that the Initial Operating Licence conditions be specific, and that regulatory overlap and diffused accountability between State Water and DIPNR in particular be avoided.

State Water is governed by a Board of Directors selected on the basis of skills and knowledge. The Board is responsible for strategic direction and risk management through the application of rigorous corporate governance. The Board will direct, monitor and regulate the organisation’s **performance** to meet Shareholders’ *subjective* requirements and **conformance to meet** the Portfolio Minister’s *objective* requirements respectively. These ministers represent the interests of the government as the owner of the business, as well as the customers and community that use water or impact on water.

**Appendix 1** contains a number of comments specific to clauses of the Operating Licence, which have not specifically been covered in the IPART Issues Paper.

## **REGULATORY ENVIRONMENT OF STATE WATER**

Apart from the internal audit processes within State Water, Treasury and NSW Audit Office processes, a number of agencies have a formal role in regulating State Water:

### **The Department on Infrastructure, Planning and Natural Resources (DIPNR)**

This department is responsible for the development, implementation and auditing State Water's performance against the Water Sharing Plans (WSP). The WSP were developed with community input, to provide water for the environment. This led to targets for annual shares and daily flows at key points along the river systems. The key components of the WSP are total annual shares for extractive users and the environmental flow rules, the operating rules for providing access, and the measures by which variations are managed. The WSP protects both the environmental share as well as the extractive share. The regulation of flow, the release of water from dams and weirs is neither optional nor discretionary for State Water, it MUST do so in response to authorised demands for water, in accordance with the WSP.

DIPNR has real time access to State Water's Water Ordering & Usage (WOU) Database and CAIRO System which is used for daily flow management to meet the WSP requirements. CAIRO continuously tracks and records the operational decisions for review and audit purposes.

State Water reports regularly to DIPNR, on performance against the WSP targets. DIPNR regularly audits these reports to assess State Water's compliance.

Under the *WMA2000*, DIPNR has the role of regulating the compliance of major water utilities. While State Water is not a major water utility (State Water has no Access Licence nor a Water Management Licence), DIPNR is expected to regulate State Water through the Works Approvals.

Similarly, there are proposed amendments to the *WMA2000* regarding mitigating impacts of cold water releases downstream of large dams, DIPNR will be accountable for monitoring State Water's performance under the Cold Water Mitigation Strategy.

### **Department of Environment and Conservation (DEC)**

DEC is responsible for auditing and reporting on the water quality in the river systems. The concern of DEC for large dam releases is principally temperature, with secondary issues being dissolved solids, salinity, turbidity, blue-green algae and heavy metals.

The water released from State Water storages has altered instream temperature. Some State Water dams have the capacity to draw water from different levels to release warm oxygenated water. At other dams the release is from the bottom of the storage where the water is colder. The operational issues are the need for balance between the risk of deoxygenating the storage resulting in a fish kill and the risk of

releasing warm water laden with blue-green algae, against the benefits of warmer instream temperatures.

Due to the incorporation of the CWP Strategy within the *WMA2000*, DIPNR will be accountable for monitoring State Water's performance under the Cold Water Mitigation Strategy.

### **Department of Primary Industries (DPI) Fisheries, Agriculture and Forests**

The *Fisheries Management Act 1994 (FMA1994)* requires consideration of impacts on fish habitat when a structure across a river is to be constructed or altered or modified. Section 218 of the *FMA1994* states that a public authority that proposes to construct, alter or modify a dam, weir or reservoir on a waterway must notify the Minister for Fisheries of the proposal, and must, if the Minister requests, include a suitable fishway or fish by-pass as part of the works.

State Water has defined "modification" to occur if any of the following is changed as a consequence of its works:

The flow regime (height/depth, quality, velocity, path, direction, timing);  
Water quality (physical and chemical pH, EC, N, P, DO); and  
Instream or riparian zone (bed and bank stability, fish habitat/passage).

State Water and NSW Fisheries developed an MOU to work cooperatively to achieve common goals as well as producing some excellent results for the community and customers.

### **Independent Pricing and Regulatory Tribunal (IPART)**

IPART consults widely with all stakeholders to determine bulk water prices based on efficient costs excluding monopoly rents. The Determination process allows public scrutiny of State Water's operating expenditure, capital expenditure and cost shares together with the forecast position for the following few years. Since July 2004, with the issue of the Operating Licence, IPART also has the primary audit and review role for State Water's Operating Licence. The IPART Issues Paper on the Interim Operating Licence is to define this role and confirm the regulatory framework and review process.

### **NSW Treasury**

The Statement of Corporate Intent (SCI) allows Treasury to monitor State Water's corporate outcomes, business performance, financial returns, together with the forecasts for following years.

### **NSW Audit Office**



The Audit Office audits the income, expenditure, operations and internal controls of State Water to ensure compliance with PA&FA and other statutory and regulatory requirements.

### **Department of Energy Utilities and Sustainability (DEUS)**

On behalf of the Portfolio Minister, DEUS liaises with State Water for Ministerial requirements, and is expected to review State Water's performance in providing relevant community service obligations.

### **Dams Safety Committee (DSC)**

The DSC is statutory safety regulator for large dams in NSW. State Water must achieve compliance with DSC standards and requirements with respect to all failure modes. State Water is required to assess compliance with standards and develop risk management strategies and works programs. The DSC audits State Water's conformance and reports annually to NSW Parliament.

DSC may require a non-compliant dam to be modified or to direct the owner to reduce risk by lowering storage water level to an acceptable risk level.

### **Other State Agencies**

In addition to the above, occupational health & safety, construction site management, procurement, heritage assets, and state records are all regulated by relevant government agencies such as the NSW Government Asset Management Committee.

### **Federal Agencies**

Although not regulated by the Murray Darling Basin, State Water is subject to federal requirements and the *Murray Darling Basin Act 1992* and Agreement. Also, as a State Owned Corporation, State Water is now subject to National Tax Equivalent regime and subject to regulation by federal agencies.

### **Conclusion**

State Water is highly regulated with respect to objectives, processes and outcomes covering all aspects of operations, natural resources, service delivery, dam safety, assets and financial management.

Consequently, in the interests of efficiency and to avoid duplication, State Water sees IPART's role as reviewing high level conformance and performance measures.

The performance measures IPART develops should possess the characteristics detailed in Points 1 to 7 in Section 4.2 above. State Water is involved in further discussion on the merits of the performance measures listed in Table 1 of the Issues Paper with IPART.

State Water would prefer the performance measures and indicators identified in the Issues Paper to be modified to reflect the principles outlined in this response and the previous work done by State Water and the Board of Directors.

**TABLE 1: The key regulatory instruments for State Water functions**

	<b>KEY REGULATORY INSTRUMENTS *</b>				
	<b>Operating Licence</b>	<b>Water Sharing Plan</b>	<b>Water Management Works Approval</b>	<b>Implementation Manuals</b>	<b>Flood /Drought Plans</b>
<b>Enabling Legislation</b>	<b>SWCA</b>	<b>WMA2000</b>	<b>WMA2000</b>	<b>WMA2000</b>	<b>WMA2000</b>
<b>Responsibility</b>	Issued to State Water by Portfolio Minister	Statutory Plan made by DIPNR	Issued to State Water by DIPNR	Written by DIPNR in consultation with State Water	Written by DIPNR in consultation with State Water
<b>Asset Management</b>	Enables and empowers State Water to own and manage assets; requires asset compliance	Not applicable	Licences SW assets and limits SW's asset management activities	Not applicable	Flood mitigation dams must comply with requirements
<b>Water and Flood Operations</b>	Enables and empowers State Water with operational functions; requires operational compliance and ESD	Codifies shares, requires specific outcomes and limits SW's flow regulation and operations activities	Not applicable	Prescribe actions; provide measurable criteria for compliance; provide for monitoring and reporting	Prescribe actions; provide measurable criteria for compliance; provide for monitoring and reporting
<b>Commercial Functions</b>	Enables and empowers State Water to operate commercially; requires commercial compliance, pricing controls and consumer protection	Not applicable	Not applicable	Not applicable	Not applicable
<b>Primary Regulator</b>	IPART (Audit & Review)	DIPNR	DIPNR	DIPNR	DIPNR

**\* The status of the NSW State Water Management Outcomes Plan (SWMOP) and NSW State Water Monitoring Program (SWMP) is unknown, and the role of the Catchment Blueprints is being determined.**

## 5 SYSTEM PERFORMANCE

### 5.1 Obligations to meet performance standards and monitor performance indicators

*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.*

**Appendix 3** contains State Water's response on Performance Standards and Indicators.

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

Section 3 discussed the regulatory framework and the number of agencies involved in regulating State Water. It is not appropriate for a second tier of regulation as this will duplicate costs and reduce efficiency. However, IPART may choose to have State Water report higher level performance indicators on compliance that are currently reported to other regulators.

The performance measures and indicators used by IPART should be relevant to operations for which State Water has sole responsibility, will drive efficiency improvement, are meaningful and will not be costly to measure. These standards and indicators should encourage continuous improvement of performance by allowing benefits to accrue to State Water.

The issues paper makes a number of references to "water efficiency" as a State Water responsibility. Where efficiencies can be achieved through State Water's powers and functions, State Water must be allowed to pursue appropriate measures and benefits. The NSW Water Savings Policy and framework are still works in progress. The security of return on investment in water savings is subject to this policy.

Currently State Water has no specific regulatory driver for water efficiency, and as it is unclear whether State Water may capture and retain the benefits of measured water efficiency savings, there is no financial driver. State Water meets its obligations by delivering water in accordance with the WSP. If however, State Water could accrue the benefits from increased water delivery efficiency, it would have an incentive to improve operational efficiency. The Initial Operating Licence should allow State Water to invest capital in order to accrue the benefits of water efficiency savings. Such a condition will deliver improved outcomes to the community and the environment.

The table in **Appendix 3** contains a list of performance indicators that could be used by IPART. State Water will consider other performance standards and indicators in consultation with IPART and other stakeholders.

Many of the Potential Performance Indicators in Table 1 of the Issues paper will require some modification to meet the criteria suggested in this submission in **Chapter 4** and **Appendix 3**.



### **Water Management Works Approvals Conditions:**

The *WMA2000* stipulates that Works Approvals are to be issued by DIPNR, to licence 'works' to manage water. 'Works' may consist of any structures, pumps, pipes, levees, channels that cause physical flow modification. Despite this stipulation, Works Approvals have not been issued for State Water nor any of the current licence holders. Once they are issued State Water will work with DIPNR, IPART and other stakeholders to develop appropriate measures for performance against the Works Approvals conditions.

The initial draft Works Approvals were cumbersome and duplicated the content of the Water Sharing Plans. The conditions for modifications to structures were discussed, to enable State Water to carry out maintenance without interference, and only require DIPNR consent if flow regimes were likely to be altered. Discussions with DIPNR have been held to finalise these.

### **Water Use monitoring and billing:**

It is appropriate for IPART to develop performance standards and indicators for the metering and billing functions. State Water recommends that Clause 4.5 of the Operating Licence will require modification **if State Water is directed** to include interest-free deferrals in the Debt Management procedures. This may affect revenue and business viability.

### **Community Service Obligations:**

State Water, DEUS, IPART and NSW Treasury will need to consult and develop performance measures for any community service obligations.

### **Fish River Water Supply Authority:**

Based on the Business and Financial Structure Review, the Government decided in the lead up to the *State Water Corporation Act 2004*, that Fish River Water Supply Authority will be operated as a subsidiary of State Water, but discrete from State Water's bulk water operations. Separate performance standards for FRWSA will be developed in consultation with DEUS, IPART and NSW Treasury. The FRWSA customers and State Water's bulk water customers are mutually exclusive, so further consultations between State Water and the FRWSA Customer Council will be required to develop customer service requirements.

## **5.2 Obligations to develop and implement asset management strategies**

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

In 2000, State Water developed the 30-year Total Asset Management Planning approach to manage its portfolio of assets, in accordance with the requirements of the NSW Government Asset Management Policy and Strategy. This approach provides for lifecycle management programs for major structures from concept to disposal and heritage management. The supporting annual planning tools are **Expenditure Planning Tool (EXPLAN)** and **Facilities Maintenance Management System (FMMS)**.

A Total Asset Management Plan (TAMP) document is published every few years to record the state of the asset portfolio and planning.

The TAMP document contains schedules of works to ensure State Water maintains its portfolio of assets “fit for purpose”. This assessment is based on a total portfolio risk management approach incorporating various failure modes and business risks including public safety, environmental and socio-economic impacts. It is appropriate for the Operating Licence to require State Water to report on achievements against the TAMP.

State Water reports quarterly to Customer Service Committees on achievements against the TAMP for the bulk water pricing process, at the CSC meetings.

State Water also reports to IPART on achievements against the TAMP for the bulk water pricing process every few years, through an update of the TAMP Document. The 2004 Version of the TAMP Document is being submitted to IPART as supporting information for the Pricing Determination.

## **6 ENVIRONMENTAL OBLIGATIONS**

### **6.1 Augmenting the broader regulatory framework**

*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.*

The broad regulatory framework adequately regulates State Water’s operations as a State Owned Corporation. State Water’s primary function of **flow regulation** to meet customer needs and environmental flows is strictly defined by the Water Sharing Plans (WSP) and regulated by DIPNR. It is the role of the WSP to mitigate and manage the impact of flow regulation, through the water sharing decisions and implementation rules.

DIPNR therefore regulates State Water to ensure that State Water does not deliver more water to its customers than is permitted under the WSP nor deliver less water to the environment than is stipulated in the WSP. In the event of missing flow data or failure of hydrometric systems (currently a DIPNR responsibility), State Water argues that it cannot be held accountable for non-compliance to flow targets.

Other environmental aspects of State Water’s operations are regulated by DIPNR for compliance with *WMA2000*. DIPNR makes determinations on rules for protection of streambed and banks, riparian zone, wetlands, rivers and foreshores.

State Water has to seek necessary approvals under the NSW planning legislation and regulations for its operations and works programs.

While DEC and DPI have had input to Cold Water Mitigation Strategy, it is expected that the amendments to the *WMA2004* will nominate DIPNR as the principal regulator for cold Water Mitigation.

#### **Land Management:**

State Water is currently not accountable for bed and bank protection down stream of its large dams such as Blowering and Hume Dam. DIPNR or Dept of Lands currently undertake this work, maintaining works crews to repair erosion caused by discharge from dams.

The dam foreshores are being transferred to State Water from DIPNR. There are significant residual issues on these foreshores caused by poor or lack of management. State Water proposes to manage these lands in accordance with NSW planning and regulatory framework, to meet various land uses including commercial and social purposes. These functions would be based on the level of community service obligations paid to State Water.

There are two major issues relating to management of catchments; activities impacting on inflows to storages and activities impacting on water quality. DIPNR and CMAs have indicated that these two issues are the responsibility of DIPNR and CMAs. State Water would have to be consulted on any developments that may impact on its operations.

### **Management of Energy and Greenhouse Emissions:**

State water supplies untreated bulk water under gravity flow for its bulk water customers. Therefore, despite the large volume of mass movement, energy consumption is negligible. Fish River Water Supply Authority however does treat and pump water to its customers.

State Water's energy consumption is principally in its vehicle usage, office heating and cooling. At this stage State Water shares office space with other agencies, with no separate metering to measure State Water's energy consumption. On a pro-rata basis, State Water's energy consumption is minimal for offices and high for vehicles. State Water has a program of automation and remote SCADA operation, thus minimising vehicle use.

State Water's assets produce new green energy through hydro-power generation. There is a program to maximise this through the inclusion of new sites as well as peak enhancement. State Water is a net producer of about 120 MWh of green energy annually.

## **6.2 Stipulating requirements for development of Environmental Management Plan**

*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).*

State Water's draft Environmental Management Plan (EMP) principally covers Operations, Works, Energy and Materials inputs and outputs. Standard Operating Protocols and Plans are being revised to ensure best practice in planning, maintenance, management, operations and procurement of goods and services.

The EMP also deals with environmental protection during works or construction, especially in protecting water sources and the riparian zone. An example is the effectiveness of the shrouding encapsulating grit blasting, use of inert grit and clean up after completion.



### 6.3 Ensuring appropriate environmental performance obligations

*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.*

A draft MOU with Department of Primary Industries (DPI) has been developed based on the existing 2003/04 MOU between State Water and NSW Fisheries. DPI now incorporates NSW Fisheries, NSW Agriculture, Forests and Mineral Resources. In the MOU's Annual Report 2003/04, DPI indicates the benefits of the type of MOU and the significant outcomes achieved through it.

The MOUs with DEC and DIPNR are being drafted and will soon be available. The MOU with DIPNR will be developed consistent with the Works Approvals to avoid conflicts.

State Water contends that the MOUs must have mutual benefits for both parties and that the MOUs must not be used to dictate conditions or requirements on State Water.

## 7 CUSTOMER SERVICE OBLIGATIONS

### 7.1 Key Service Issues for Customers

*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.*

In 1999 State Water constituted a formal customer consultative mechanism by forming eight Customer Service Committees (CSCs). This was supported by IPART in its previous determinations. The CSCs meet quarterly and its members are elected by customer groups for a two-year term. The members elect a chair to serve for a year. State Water provides the CSCs with administrative support and reports to them quarterly, on operational performance, revenue and expenditure, asset management outcomes and proposals. The CSCs are fully funded by customers.

The Interim Operating Licence requires State Water to establish and maintain the CSCs and to develop a Customer Service Charter. The terms of the eight CSCs that are currently in place have been extended to enable a review of the Terms of Reference and development of the new Customer Service Charter. Due to the requirement of the Interim Operating Licence, the CSC Chairs have written to all the relevant Catchment Management Authorities (CMA) seeking their representative on the CSC. Most of the CMAs have responded positively and 7 of the 8 CSCs now have CMA representation.

The CSCs have concerns relating to additional levels of service sought by way of information or new investments that would result in better service. An example of this was the proposal by a CSC to sponsor a research student to investigate decision support systems, by adding \$0.1/ML charge to their valley usage. State Water could not accede to this request as it was outside the IPART pricing for that year. This would have allowed a higher level of service to customers and a better outcome for the community.

As mentioned earlier, a joint committee with representatives from Macquarie and Lachlan CSC committees and State Water is developing a Customer Service Charter for discussions with the other six CSCs. This Charter will cooperatively define the relationship, levels of service and performance standards, for State Water's services to all customers.

The Customer Service Charter will specify the customer service issues and relevant measures that are of prime importance to the customers. State Water prefers the Initial Operating Licence to simply require compliance with the Customer Service Charter rather than imposing a separate set of requirements.

## 7.2 The relationship between State Water and its customers

*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.*

*.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).*

State Water has a good working relationship with its regulated river customers. As State Water's operation is "Delivery On-Order", customer contact is frequent and effective, resulting in high levels of satisfaction. Regulated river customers chair seven of the eight CSCs. The CSC Chairs and State Water Customer Service Managers develop the CSC meeting agendas and review the business transacted at the meetings.

Communication between regulated river customers and State Water customer service staff happens on a daily basis as normal operations are transacted in water ordering, amendments, metering, billing, payments, transfers and information provision. The larger Irrigation Companies have a number of other transactions with State Water. These operations are conducted in accordance with policy, standard protocols and procedures, which are well known to customers and staff. If these standards are breached, the customers advise management of the matter for resolution. This is often a role CSCs undertake.

The relationship between State Water, DIPNR, and regulated river customers is defined in the protocols and the WSP. The separation of functions between DIPNR and State Water are still under debate as DIPNR develops and adopts its future role. Once DIPNR accepts that the corporatisation of State Water requires clear functional separation, State Water will have defined responsibilities and will not need to consult DIPNR for operational tasks, unless consultation with DIPNR is specified in the MOU. This will mean that State Water is able to advise customers of water availability, manage water accounts, suspend Access Licences for over extraction of water, non-payment of bills and non-compliance with metering policy. In

addition, State Water can impose fines and penalties on the Access licencees for these breaches.

State Water however has no powers to cancel Access Licences, and can only recommend to DIPNR to effect a cancellation. Given that Access Licences have been converted to Perpetual Licences (no renewal required), and that there is a statewide embargo on regulated rivers, Licence administration is now merely operational in nature and State Water could be delegated this function or contracted to undertake this work.

Appropriate separation of functions and clearer role definition of the regulator and the operator will see an increase in accountability, operational efficiency and improved reporting.

The Fish River Water Supply Authority (FRWSA) is an isolated scheme that will continue to operate as a Subsidiary entity with no cross subsidy exchanged with bulk water operations. If costs cross the barrier between FRWSA and State Water it will be on the basis of a service contract. The operation of FRWSA will not impact the regulated river customers. FRWSA has a Customer Council that operates very similarly to the CSCs. In addition, the Council reviews pricing proposals from FRWSA prior to Ministerial determination. State Water supports the maintenance of the Customer Council, as it is operating well, significant price increases have recently been negotiated and customer satisfaction is high.

The Initial Operating Licence does not need to include customer service obligations. State Water will continue to provide services on unregulated and groundwater systems as sought by those customers, but under contract to DIPNR. Currently these services include some metering, all billing and receipting, as well as handling considerable customer complaints. DIPNR is yet to specify its requirements, performance measures and contract conditions.

## **8 COMMUNITY ENGAGEMENT OBLIGATIONS**

*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.*

The most effective form of consultation is to consult and work with community representatives, to develop details of the consultation framework and information requirements, identify impacts, develop options and then implement actions to meet requirements.

A joint committee with representatives from Macquarie and Lachlan CSC committees and State Water are developing a Customer Service Charter for discussion between State Water and the six other CSCs. This Charter will co-operatively define the framework and information requirements for consultation between the CSCs and State Water.

The CSC membership includes representatives from regulated rivers, unregulated rivers and groundwater customers, local government, major corporate customers and now, Catchment Management Authorities. All unregulated and groundwater representatives have requested that State Water maintain its role in providing services to them and also that they retain their

representation on the CSCs. State Water agrees with this position, as it benefits all customers and State Water in the cost effective provision of common services.

The Terms of reference for the CSC exclude any resource management functions or decision making, as the composition of the CSC was not constituted with this objective in mind. In addition, the River Management Committees and subsequently the CMAs are charged with this accountability. However, State Water is currently considering inviting environmental groups to join these committees given the potential benefits.

State Water provides all resources to manage the affairs and carry out the resolutions of eight CSCs. These committees predominately consider operational issues and asset management issues, strictly within the functions and powers of State Water.

In addition, whenever State Water undertakes significant capital works programs with multiple objectives, a Community Reference Panel (CRP) is established to consult widely on the project objectives, processes, impacts, development and selection of options. The membership consists of all key stakeholder representatives including all relevant agencies. These CRP have been in place for Keepit Dam, Chaffey Dam, Blowering Dam and to a lesser extent, for Macquarie Weirs. These CRP have been highly effective, resulting in commencement of all three projects and completion of interim works. These CRP are fully funded by the customers.

The Interim Operating Licence proposes that State Water constitute a Community Consultation Committee (CCC) to engage with the wider community. The intended membership of the CCC overlaps with the CSCs with the exception of environment groups. State Water believes the CCC is **not** an effective vehicle for community consultation, as it is unlikely to have the 'resolution', nor operate at the 'scale' required for an operations business. State Water's business has to be focussed at valley level, to respond to practical and operational issues in real-time. A statewide entity would not be useful for State Water's operations.

The Board of Directors has broad representation from key stakeholders and has relevant operational, environmental and economic expertise to direct State Water recognising wider community interests. State Water considers that this makes the CCC redundant.

The CCC would require additional resources to develop, operate and report the outcomes. It is also unclear as to what terms of reference such a CCC can operate to and whether it would have the necessary mandate from government and customers to make any difference.

Given State Water's existing framework for community consultation, the best outcome will be achieved by broadening the CSCs to include relevant interest groups. This will allow local people to have input to the local issues while still having the ability to influence statewide issues through the relationship with State Water management. If consultation at a state level becomes necessary, the **Natural Resource Commission (NRC)** is an obvious vehicle for consultation. The NRC will provide strategic input to improving the regulatory and operating environment.

The Initial Operating Licence conditions for community consultation should follow the CSC Terms of Reference and Customer Service Charter, which will be developed with significant

community consultation in order to specify what services the community requires. Reporting against the CSC Charter would avoid considerable duplication.

## **9 PROVISIONS IN RELATION TO AUDITING THE OPERATING LICENCE**

*The Tribunal seeks comments on the following:*

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

As State Water is already tightly regulated and subject to review by several agencies and scrutiny by the public (See Boxed section under 4.2), IPART need only take a risk management approach to the audit process. Auditing the full spectrum of the licence conditions by IPART will result in duplication, expense, time and resources. Considering the number of other regulators overseeing State Water's operations, there will be minimal risk in IPART undertaking a risk management approach. A properly structured risk management audit process will be efficient, effective and an economical use of resources.

The Interim Operating Licence will cease on 30 June 2005 with the Initial Operating Licence commencing on 1 July 2005. The Interim Operating Licence stipulates an audit twelve months after the Initial Operating Licence commences and every two years following that. Additionally, an end of licence review is required. In the interests of effectiveness and efficiency, this proposed audit program needs to be reviewed. The current program calls for an audit and an end of licence review in the fifth/sixth year. State Water suggests that the **Audit** and **End of Licence Review** be combined.

The Audit should cover the two main areas of concern for the Portfolio Minister, namely *asset protection* and *consumer protection*. The focus areas should be on the highest potential risk to the Portfolio. These include asset management (ability to provide water and ensure public safety) and water delivery (service to water users, the community and the environment). The third area of risk in price regulation is already covered by IPART setting the maximum price.

In this risk management approach, reports from other regulatory agencies and parties to the MOUs would be reviewed by IPART for outcomes and evidence of the cooperative approach.

State Water suggests that apart from its Annual Reporting Requirement, that it report to IPART against the Operating Licence, with appropriate references to other statutory reports to DIPNR, Treasury and Dams Safety Committee.

## **10 APPENDIX 1 - COMMENTS ON SPECIFIC INTERIM OPERATING LICENCE CONDITIONS:**

1. Clause 3.1.3
  - The reference to Section 71E should be deleted.
  - The reference to Section 71M(4) should be to Sections 71T and V.
  - The reference to Section 85B (Civil Penalty) should include a reference to the ability to debit water accounts as well (Section 85B[1](a)).
  - The exercise of the power under Section 392 1(a) should be extended to regulated rivers managed under the provisions of the *Water Act 1912*.
  - State Water seeks exemption from requiring an Access Licence for power generation, as water is not consumed or extracted from the system.
2. Clause 3.1.4
  - A reference to Section 20AE of the *Water Act 1912* should be included as follows. “Entering land and inspecting works under the provisions of Section 20AE”.
  - Add the following: “Giving a written order under Section 192”
  - Add the following: “Direct a water management authority pursuant to Section 197 to take a specified action.”
3. Clause 3.5 will need to be amended to include the Fish River Water Supply Scheme.
4. The reference to the Australian Standard in 4.6.2 is superseded and should be AS 4608 – 2004.
5. There seems to be duplication in part between the objectives of Clause 4.6 and Clause 4.7.
6. Clause 4.6.4, The definition of an unplanned deficit or surplus is limited to unplanned operational surpluses and deficits, as natural events could result in unplanned deficits and surpluses.

Rivers and dams on the major regulated rivers for which there are Water Sharing Plans are operated in accordance with those plans.

A Water Sharing Plan may not allow access to supplementary flows at times. A customer may feel aggrieved but the access decision is beyond the control of State Water.
7. The scheme provided for in Clause 4.7 should not be used as an appellate forum in respect of a complaint dealt with in Clause 4.6.
8. If a complaint has been made to a body referred to in Clause 4.8, query whether the same complaint may be dealt with under Clauses 4.6 and 4.7.
9. As regards Clause 5.1, if performance standards have been agreed to with customers and other stakeholders, IPART should accept these performance standard or performance indicators.

10. Some of the matters dealt with in Clause 5.1.1 are controlled or managed by other regulators. For example;
- Flood management downstream of a Dam is a matter for DIPNR;
  - Rate and timing of releases of water allocated to the environment is a matter for DIPNR;
  - Dam safety Standards is a matter in part, for the Dams Safety Committee;
11. Clause 6.1 is a requirement of the WSP. State Water is obliged to make releases of water to meet the needs of:
- The environment
  - Authorised users (domestic and stock users)
  - Access licence holders rights.

It follows that, unless water is being released for these requirements under a WSP, State Water must legally conserve all water in the relevant storage.

12. As regards Clause 9, State Water has entered into a Memorandum of Understanding with DPI (Fisheries Office). The MOU runs from July 2003, for a period of three years.

Clause 9.1 State Water intends to enter into a fresh MOU with DPI once the existing one expires.

As regards Clause 9.3, DIPNR has indicated that it has no interest in monitoring water quality in Storages. However, the DIPNR Corporate Plan indicates otherwise. Some clarity is required in this regard.



## **11 APPENDIX 2 – SEPARATION OF POWERS AND FUNCTIONS**

DIPNR and State Water interface occurs at 8 levels, requiring consideration and arrangements. It is important to consider all these while determining functions, powers, roles and responsibilities, as there is considerable interplay among these instruments. There is also significant change within the two organisations as well as between them. In broad terms, the following diagram depicts the relationship at various levels:

<b>DIPNR</b>	Provides water for environment and creates property rights	9. <i>Water Management Act 2000</i>	Allows SW to deliver water to all authorised users	<b>STATE WATER</b>
	Provided input to functions and powers	10. <i>State Water Corporation Act 2004</i>	Allows SW to deliver services, exercise powers	
	Input to Operating Licence conditions	11. Operating Licence (OL)	SW must operate to OL conditions	
	Sets shares and codifies access to water	12. Water Sharing Plans (WSP)	SW manages and administers system as per WSP	
	Codify rules for operation of system	13. Implementation Manuals (IM)	SW must operate to rules set in the IM	
	Issues Works Approvals for existing use	14. Works Approvals (WA)	Allows SW to use its structures to regulate flow	
	Encourages cooperation for mutual benefit	15. Memorandum of Understanding	Encourages cooperation for mutual benefit	
	Exchange of services under contract	16. Contracts	Exchange of services under contract	

## Allocation of Functions to Dept of Infrastructure Planning & Natural Resources (DIPNR) and State Water:

This is consistent with Allocation of Powers to Minister Sartor (EU&S) exclusively or jointly with Minister Knowles (DIPNR); Inter-Agency Steering Committee of Corporatisation; Letter exchanged between Ministers on sharing of functions.

<i>Function</i>	<i>Accountability</i>	<i>DIPNR Actions</i>	<i>State Water Actions</i>
<b>I. Asset Management</b>			
1. Asset Ownership	SW must own, operate and maintain all bulk water delivery assets. This includes all flow management works, whether for extractive or diversion purposes, on regulated river systems. SW to manage unregulated and groundwater assets under contract to DIPNR.	DIPNR to issue <b>Water Management Works Approvals (WMWA)</b> for water delivery assets to State Water. <i>Action Pending</i>	<b>State Water Corporation</b> to own and manage the assets and maintain its <b>Asset Register</b> . <i>Action pending with DIPNR</i> . SW to comply with WMWA.
2. Total Asset Management Planning	SW accountability for Lifecycle Management Planning and Implementation (investigations, designs, project management, construction, O&M, MPM, Replacement, Disposal)	DIPNR and SW to negotiate levels of environmental services and basic rights required at assets. <i>DIPNR has specified these in the Water Sharing Plans</i> .	SW to address specified levels of service in the <b>TAMP</b> . SW to negotiate with customers on levels of service. SW to seek consent from DIPNR under WMA, EP&AA if service levels are to be modified.
3. Asset Operations	SW must operate its assets.	DIPNR to provide input to <b>Operating Protocols</b> to define WQ outcomes for storages and weirs.	SW to implement operating protocols and if required, renegotiate.
4. Routine O&M Activity	SW carries out all routine operation and maintenance and surveillance activities.	Nil	SW to provide advance notice to DIPNR if envtl flows/basic rights are likely to be affected.

<b><i>Function</i></b>	<b><i>Accountability</i></b>	<b><i>DIPNR Actions</i></b>	<b><i>State Water Actions</i></b>
5. Renewals Activity: MPM, rehabilitation and replacement	SW to carry out renewals activity.	Nil	SW to provide advance notice to DIPNR if envtl flows/basic rights are likely to be affected.
6. Compliance upgrades for dam Safety, OHS, Environmental needs	SW accountable for asset compliance with all statutory requirements (DSC, ANCOLD, OHS) as well as levels of service and environmental needs in accordance with Risk Management Strategy.	DIPNR to nominate resource management representative on relevant project committees and community consultation process.	SW to seek relevant consents from DIPNR or Fisheries under WMA, EP&AA, FMA if service levels are to be modified.
7. Enhancements/ Developments	SW is responsible for managing asset enhancement/development projects, in consultation with stakeholders.	DIPNR to provide "Director General's Requirements" in writing for the project in question. DIPNR to approve/make determinations on developments under planning laws.	SW to seek DIPNR requirements in writing. SW to seek relevant consents under WMA, EP&AA if service levels are to be modified.
8. NSW Constructing Authority for MDBC	State Water replaced Water Administration Ministerial Corporation as the Constructing Authority under the <i>SWCA2004</i> . All functions and roles of Constructing Authority must be transferred from DIPNR to State Water.	DIPNR to transfer relevant Murray assets and works programs to State Water: Forest regulators, weirs, salt interception schemes, erosion control work downstream of dams. <i>DIPNR does not agree.</i>	State Water to own and manage these assets in accordance with its Total Asset Management Plan.

<i>Function</i>	<i>Accountability</i>	<i>DIPNR Actions</i>	<i>State Water Actions</i>
<b>II. Water Operations</b>			
9. Flow Monitoring	<b>After the interim 12 month arrangement.</b> State Water must be accountable as owner-operator of Surface Water Flow Monitoring Network. Data to be made available to DIPNR and the public.	DIPNR and SW to enter into a Data Supply Contract for Flow Monitoring Data. State Water to have communications access and 3 <sup>rd</sup> party access to hydrometric network. <i>Action Pending.</i>	2004/05: SW to enter into 12 month Contract and review performance. State Water to purchase HYDSYS licence.
10. Water Operations Planning	SW accountability to develop and implement Operations Plan.	DIPNR to provide <b>Implementation Plan/Program</b> for each Water Sharing Plan. <i>Action Pending.</i>	SW responsibility to prepare <b>Annual Operations Plan</b> in response to Implementation Plans, WSP, BAR and AWD. <i>Action Pending.</i>
11. Resource Assessment	SW accountability to prepare assessment statement and submit to DIPNR	DIPNR to <b>approve</b> the Resource Assessment <b>process</b> for each regulated system.	SW to prepare <b>Resource Assessment</b> , based on inflows and usage. <i>DIPNR does not agree.</i>
12. Allocation Enhancements or AWD increments	DIPNR accountability to make the <b>decision</b> within 5 working days of the Resource Assessment. State Water to update the <b>Register</b> .	DIPNR to make AWD allocation <b>decision</b> in accordance with WSP, BAR, AWD.	SW to submit Resource Assessment and provide supporting information to assist DIPNR in allocation decision (AWD).
13. Allocation or AWD Announcements	SW accountability to advise customers through media, internet, email, faxstream, IVR telephones, SMS	DIPNR to make the AWD decision <b>and advise State Water</b> . <i>DIPNR wants State Water to make announcement as DIPNR and to include DIPNR logo on media release.</i>	SW to advise customers through media/internet and direct communication (fax/email), using the agreed Template and acknowledging DIPNR's role as decision maker.
14. Off-Allocation (Supplementary Water) Availability	SW accountability to assess Off-allocation availability in accordance with rules.	DIPNR to approve <b>assessment process</b> for each regulated system.	SW to determine off-allocation/supplementary water availability in real-time, as per WSP. SW to advise customers through media and direct communication.

<i><b>Function</b></i>	<i><b>Accountability</b></i>	<i><b>DIPNR Actions</b></i>	<i><b>State Water Actions</b></i>
15. Management of Allocated Water	SW accountability to manage and deliver the allocated water to customers.	DIPNR to review quarterly and seasonal reports.	SW to maintain CAIRO; manage the allocated water and prepare quarterly and seasonal reports.
16. Water Order Mgmt	SW accountability to manage Water Orders to ensure access to water to all users.	Nil	SW to maintain and manage water orders and Water Orders & Usage Database (Water Accounting System).
17. Water Usage/ extraction monitoring	SW accountability to monitor Water Usage/ extraction in all regulated systems.	DIPNR accountability to monitor Water Usage/ extraction in all unregulated and GW systems.	SW to undertake monitoring on unregulated and GW systems under contract with DIPNR.
18. Carry-over Mgmt	SW accountability to manage Carry-overs, consistent with WSPs to enable customers to maximise efficient use of water.	DIPNR to specify Carry-over Policy, review status of Carry-over on the Water Usage Database.	SW to update Water Orders & Usage Database, maintain and manage carry-over in accordance with WSP, BAR and AWD.
19. Demand Management	SW accountability to manage Demand to ensure equitable delivery of water when physical supply constraints occur or are likely to occur.	DIPNR to assist State Water during demand management periods.	SW to carry out demand management, through controls on extraction.
20. Bulk water transfers (High Volume Transfers)	SW accountability - In accordance with WSP, water can be transferred between dams and from dams to weir pools to enable efficient water delivery.	DIPNR to provide conditions for the transfer of water, rates of discharge variation, and approve the HVT.	SW to develop the annual Operating Plan specifying volume and timing of the transfers between dams.
21. Drought Contingency Planning	DIPNR to declare "Drought". In periods of extreme resource shortage beyond drought of record, a Drought Contingency Plan must be developed <b>jointly</b> by DIPNR and State Water.	DIPNR to approve Contingency Plan. DIPNR to invoke Contingency Plans when situation reaches critical threshold. DIPNR to specify conditions for drought contingency plans.	SW to prepare Drought Contingency Plan and identify contingency measures for supply beyond the 'drought of record' conditions.
22. Flood Operations	SW accountability. Flood operations must be consistent with Flood Operations Plans and Manuals.	DIPNR to update Flood Management Plans and manuals to reflect WSP process.	SW to implement Flood Operations Plans and operate in accordance with current accreditation process.

<i>Function</i>	<i>Accountability</i>	<i>DIPNR Actions</i>	<i>State Water Actions</i>
23. Hunter River Salinity Trading Scheme Operations	SW accountability to manage and operate DEC's Hunter River Salinity Trading Scheme(HRSTS).	DIPNR to transfer DEC (EPA) Contract to SW. <i>DIPNR does not agree.</i>	SW to operate and maintain HRSTS and report to DIPNR and DEC.
24. Storages Water Quality	DIPNR accountability for NSW WQ <b>Management</b> Program. SW to maintain a Storages Water Quality <b>Monitoring</b> Program as required under Works Approval.	DIPNR to develop the Program and Project Plan as required, and specify inputs and outputs, outcomes. DIPNR to advise community. DIPNR will continue program on weirs and rivers. <i>DIPNR does not agree that it should develop any specifications.</i>	2004/05: State Water to collect samples and provide response support, under Contract to DIPNR. 2005 onwards: SW to maintain a Storages WQ Monitoring Program as its function.
<b>III. Customer Service</b>			
25. Customer Water Account Management	SW accountability to manage Water Accounts for all regulated systems, using its <b>Water Ordering and Usage System</b> .	DIPNR accountability for all unregulated and groundwater systems. DIPNR to enter into Contract with State Water for monitoring usage and billing on unregulated and GW systems.	SW to manage Customer Water Accounts, usage monitoring & usage compliance and customer liaison on regulated systems, <b>crediting</b> and debiting of accounts. <i>DIPNR does not agree with crediting. See Page 32- Unresolved Issue.</i>
26. Temporary Water Transfers (Allocation Assignments)	SW accountability to process <b>intra-valley</b> temporary transfers quickly and efficiently, in accordance with WSP. <b>Inter-valley and Inter-State</b> transfers to be approved by DIPNR.	DIPNR to specify temporary transfer rules. Inter-Valley and Inter-State Transfers to be approved by DIPNR, within four working days of request (Murrumbidgee, Murray, Lower Darling and Border Rivers).	SW to process all Temporary Transfer Applications in accordance with Customer Charter and agreed rules. This includes crediting and debiting relevant customer water accounts.
27. Licence Administration	DIPNR accountability to administer Licensing and maintain database. <i>This could easily be contracted to State Water</i>	DIPNR to provide free view access to Database. DIPNR to ensure that SW claims on Licences are registered.	SW to seek DIPNR <b>approval</b> if any works under a Works Approval is to be modified.

<i>Function</i>	<i>Accountability</i>	<i>DIPNR Actions</i>	<i>State Water Actions</i>
28. Compliance and enforcement	DIPNR sole accountability for <b>Cancellation</b> or <b>Prosecution</b> Action on Access Licences. SW power to <b>suspend</b> licences for overuse/non payment.	DIPNR power to <b>suspend or cancel</b> licences for breach of specified licence conditions. DIPNR to consult with SW on proposed action and advise on decision.	SW to consult DIPNR on proposed cancellation action. SW to advise DIPNR to cancel.
29. Permanent Water Transfers	DIPNR accountability. <i>This could easily be contracted to State Water.</i>	DIPNR to process in accordance with rules.	SW to provide relevant information on usage and account balances to DIPNR.
30. Customer billing and debt management	SW accountability for all regulated water sources. SW to undertake on unregulated and groundwater sources, under contract to DIPNR	DIPNR accountability for all unregulated and groundwater systems. DIPNR to contract SW to undertake unreg and GW billing and debt mgmt.	SW to maintain Billing System and Credit policy. SW to issue debt certificates to conveyancers.
31. Customer Service Committees	SW accountability. CSCs to include unregulated and Groundwater customer representatives.	DIPNR to continue representation on CSCs as invited.	SW to manage CSC processes in accordance with Terms of Reference. SW to invite DIPNR as required.
32. Customer Notification	SW accountability to notify customers on all water delivery issues.	DIPNR to provide necessary input to media releases. DIPNR to manage all WQ and Environment related notification when it is not combined with general customer notification.	SW to manage all customer notification, with relevant input from DIPNR if necessary.

## **12 APPENDIX 3 - PERFORMANCE STANDARDS PROPOSED BY STATE WATER**

### **A. Total Business Performance:**

State Water as a bulk water delivery business must deliver the water allocated to customers and the water allocated to the environment.

There are two performance targets for State Water:

- Water delivered to the customers must be below the maximum permissible volume under the Water Sharing Plan, and
- Water delivered to the environment must be above the minimum permissible volume under the Water Sharing Plan.

Based on a series of functional analyses, business reviews and process of corporatisation, State Water developed the following Key Result Areas in which it must succeed to deliver its vision and mission.

State Water will measure success at meeting targets in these five Key Result Areas through the regular monitoring of Performance Indicators.

**Our People** demonstrated by focussed, motivated and highly skilled staff.

**Customer Service** demonstrated through customer satisfaction with agreed products and services.

**Water Delivery** demonstrated by water delivered with consideration for timeliness, price, quantity, quality, and environment.

**Asset Management** demonstrated through the management of water infrastructure for future generations at acceptable cost and minimum risk.

**Business Success** demonstrated by continuous improvement of the business with appropriate financial performance.



	<i>Strategies</i>	<i>Key Actions / Tasks</i>	<i>Performance Standards</i>
<b><i>KRA 1:</i></b> <b><i>Customer Service</i></b>  Our customers are satisfied with the products and services we provide	Good communication and consultation with customers	Maintain and resource Customer Service Committees (CSCs)	Customer Satisfaction Index maintained above 80%
	Timely access for all customers to: information; and  resource availability / sharing decisions	Development of interactive electronic services  Survey Customers to identify needs and satisfaction with products and services  Provide easy access to customers for enquiries and feedback  Develop a process and facilitate resource availability, water sharing, service level, and investment decisions	Number of hits and transactions on Internet site  Customer Satisfaction Index maintained above 80%  Decrease in number of complaints to the statewide call centre (1800 number)
	Cost effective delivery of services	Develop customer and supplier service agreements with negotiated levels of service and standards	Evaluation of compliance with Customer Service Charter % Regulated metering costs/ licensed works % metering costs/ works % billing costs/invoices raised % billing costs/revenue

	<i>Strategies</i>	<i>Key Actions / Tasks</i>	<i>Performance Standards</i>
<b>KRA 2:</b> <b>Water Delivery</b> We will deliver water in a manner which meets timeliness, price, quantity, quality and environmental requirements	Continuous improvement in water delivery	Through better definition of products such as water sharing plan outcomes  Review and enhance water ordering procedures and systems	% Compliance with rules  % Operational surplus
	<i>Increased water delivery operations efficiency</i>	Streamline operating procedures to maximise delivery of water to meet stakeholders' needs  Improve the analysis and access of real time and historical water data	% Time, shortfalls in operational targets % Water operation costs/ML delivered
<b>KRA 3:</b> <b>Asset Management</b> We will manage safe, reliable and cost efficient structures	Further development and implementation of Total Asset Management Plan and its maintenance	Determine: service level, functionality and heritage value of major structures; and environmental impacts and other stakeholders in consultation with CSCs and other stakeholders  Benchmarking operational and maintenance procedures and practices  Develop Optimal Renewal Decision Making procedures	Number of life cycle programs developed, maintained and implemented.  Actual maintenance costs as a proportion of replication value

	<i>Strategies</i>	<i>Key Actions / Tasks</i>	<i>Performance Standards</i>
	Business and Portfolio Risk management	Determine and understand risk to community, financial and business risk  Develop risk reduction/mitigation strategies	Risk reduction or mitigation achieved in terms of loss of life, economic and environmental impact.  Insurance premiums that reflect risk
	Compliance with Dams Safety Committee requirements	Develop maintenance and surveillance procedures and audit to ensure compliance with established procedures  Maintain a surveillance program for all major structures to ensure their safety  Develop a five-yearly safety review program for major dams  Update, trial and maintain Dam Safety Emergency Plans	Total audits carried out  100% of immediate actions highlighted in audits completed  Program maintained and updated as appropriate  Program developed by 2008  DSEPs updated and maintained as appropriate  50% DSEPs trialed by 2008
<b><i>KRA 4:</i></b> <b><i>Business Development</i></b> We will operate a commercially viable business with appropriate	Responsive business planning and development	Develop and implement business plan.  Implement integrated quality systems that successfully support the business	Cash flow  % Cash flow/Asset value

	<i>Strategies</i>	<i>Key Actions / Tasks</i>	<i>Performance Standards</i>
	Performance management using the Balanced Scorecard methodology	Implement a Quality Plan based on Balanced Scorecard approach	% Overhead \$/Total budget expenditure % State Water share of revenue/user share of State Water costs Decreasing Leave Liability
	Compliance with COAG and NCC requirements	Review existing processes and implement standardised processes Full cost recovery	% Total revenue/State Water total costs % \$ Collected/\$ Sales % Current assets/Current liabilities Reduction in operating subsidy
<b><i>KRA 5: Our People</i></b> We will develop focussed, motivated and highly skilled staff	Competency / motivation based recruitment and training	Identify competencies required and target recruitment actions for critical skills  Develop training and accreditation procedures to match skill and quality requirements	Capacity to achieve required outcomes  Increased staff satisfaction index
	Good communication and consultation with staff	Develop internal communication strategy  Involve staff in strategic planning activities and reward the application of business values	Strategy developed and implemented  Number of Staff Consultative Committee meetings held
	Compliance with OH&S requirements at all work sites	Utilise technology in the development of products  Survey staff to improve worker involvement, levels of respect and career opportunities  Communicate with and involve all staff in Strategic Direction and business operations	Increasing staff safety  Increasing productivity rate  Decreasing rate of absenteeism Decreasing rate of staff turnover

**Note: These KRA and Targets are currently being reviewed by the State Water Corporation Board.**