

**REVIEW OF THE OPERATING LICENCE FOR  
STATE WATER CORPORATION**

**SUBMISSION BY TOTAL ENVIRONMENT CENTRE TO  
THE INDEPENDENT PRICING AND  
REGULATORY TRIBUNAL**

**November 2004**

## **INTRODUCTION**

Total Environment Centre (TEC) welcomes the opportunity to comment on the review of the Operating Licence for State Water Corporation. Responses to issues raised by Independent Pricing and Regulatory Tribunal (IPART) discussion paper are provided below.

TEC strongly supports the development of an Operating Licence for State Water. As detailed below we believe that the operating licence is an essential instrument in ensuring accountability and transparency for monopoly water agencies.

## **ROLE OF THE OPERATING LICENCE**

As TEC has noted in relation to both Sydney Water Corporation (SWC) and the Sydney Catchment Authority (SCA), the Operating Licence provides a simple and transparent mechanism for ensuring that monopoly water agencies' operations are publicly accountable (TEC, 2004). It is essential that the Operating Licence be an overarching instrument that clearly sets out obligations and performance requirements. We note that State Water's regulatory arrangements are complex with obligations under the Water Management Act 2000 and Water Act 1912 to agencies and organisations including the Tribunal, Department of Infrastructure Planning and Natural Resources (DIPNR), NSW Dam Safety Committee, Catchment Management Authorities (CMAs) and the Natural Resources Commission (IPART, 2004).

This complexity highlights the need for the Operating Licence to act as a single overarching instrument that incorporates the key requirements of other regulatory instruments. Allowing these obligations to rest solely within other instruments could lead to regulatory confusion and create barriers to review of performance in the operational audit. The Operating Licence provides an integrating instrument that allows coherent management of State Water. No other regulatory agencies or instruments provide such a function.

TEC notes that the Tribunal is concerned to prevent regulatory overlap. We do not suggest that the Operating Licence should replicate the requirements of other regulatory instruments or seek to override the function of other agencies in areas where they are primary regulators. We do, however, believe that it is essential that the Licence ensure that there is no fragmentation of accountability or areas which are essentially 'blind' in the operational audit. TEC recommends that the licence include provisions which specifically require State Water to comply with each of these other regulatory instruments and allow performance in this regard to be considered in the operational audit.

In setting standards and providing accountability measures, the Operating Licence also plays a vital role in assisting cultural change rather than allowing agencies to simply fall back upon comfortable bureaucratic arrangements.

### **Delegated functions**

TEC notes that a number of functions may be conferred non-exclusively on State Water, subject to agreement between the Minister for Energy and Utilities and the

Minister for Natural Resources. We note also that DIPNR and State Water are implementing protocols that cover their respective responsibilities regarding compliance and enforcement (IPART, 2004).

TEC believes that the Operating Licence should require that these protocols be codified in a Memorandum of Understanding (MoU) between State Water and DIPNR. This would ensure transparency in the relationship between the two agencies and delegated functions. It would also allow State Water's performance against the functions delegated to it by the MoU to be considered in the operational audit.

### **Water supply functions**

It is significant that State Water will assume responsibility for operating the Fish River Water Supply Scheme from 1 January 2005. This will make State Water both a bulk water and residential water supplier.

TEC strongly supports the application of the operating licence model to water supply authorities and believes that the State Water licence should cover all aspects of the operation of the Fish River Water Supply Scheme. To the extent that they are relevant to the scheme, the licence should include similar provisions to those included in the Operating Licences for SWC and SCA and Hunter Water. This should include performance standards and indicators, asset management, environmental protection, water conservation and health obligations.

## **SYSTEM PERFORMANCE**

### **Performance standards and indicators**

TEC supports the performance standards and indicators proposed in the Tribunal's discussion paper (IPART, 2004). In the absence of detailed data on State Water's performance in a number of areas it is difficult to comment on the level at which performance standards should be set. In general, however, we believe that, as a minimum, performance standards should be set at such a level as to ensure that there is no deterioration in performance.

While it is acknowledged that a degree of headroom in system performance standards is necessary, a substantial gap between present performance and standards could provide a perverse incentive to reduce investment in asset management and allow performance to fall without breaching the licence. It is reasonable to expect that customers would not accept deterioration in present performance. We therefore recommend that Tribunal allow a minimum degree of headroom in the standards to effectively rule a line under present system performance.

TEC acknowledges the point highlighted in the discussion paper that in order to put performance indicators into context and allow meaningful comparison over time, it may be appropriate to include obligations to collect baseline explanatory data. TEC would support a including requirement to collect such data in the Operating Licence. Data collected should include baseline environmental data such as water quality, water temperature and environmental health downstream of State Water storages. While such factors are not wholly under the control of State Water, it is clear that

their operations and, in particular, the timing and nature of releases in regulated rivers will have a major effect on water quality and river health. As such performance standards and indicators for these factors should be included in the Operating Licence.

As noted above TEC strongly believes that specific performance standards and indicators should be included for the Fish River Water Supply scheme. To the extent that they are relevant, these should be based on standards and indicators in the SWC, SCA and Hunter Water licences. This would ensure regulatory consistency and allow comparison and benchmarking of performance.

### **Asset management**

TEC concurs with the Tribunal's view that asset management should be directly addressed in the Initial Operating Licence (IPART, 2004). We support the view that inclusion of asset management obligations can provide transparency and assurance to stakeholders via the audit process. The inclusion of such obligations also provides a strong incentive for a regulated entity to ensure that an effective asset management strategy is put in place.

The nature of State Water's assets and the severe, environmental, social and economic costs of failure make it essential that asset management requirements be included in the Operating Licence. We note that the Interim Operating licence requires State Water to develop and implement a Total Asset Management Strategy, but that no deadline has been set for its development and implementation (IPART, 2004). The Initial Operating Licence should set clear deadlines and ensure that compliance with these, and the adequacy of the strategy itself, is assessed in the operational audit.

TEC acknowledges the primary role of the NSW Dam Safety Committee (DSC) in developing and implementing guidelines for dam safety. Given the critical importance of maintaining safety of dams and the fact that it constitutes a core State Water responsibility the Operating Licence should retain references to meeting these standards. Performance in this regard should be included in the operational audit.

### **ENVIRONMENTAL OBLIGATIONS**

TEC acknowledges the point made in the discussion paper that DIPNR will play a major role in regulating State Water's environmental performance via its water Supply Work Approvals and that State Water has arrangements in place with NSW Fisheries regarding fish passage (IPART, 2004). We welcome the Tribunal's view that, despite this, the Operating Licence has the potential to play a useful role by augmenting the broader regulatory framework, stipulating requirements in regarding an Environmental Management Plan and ensuring that appropriate environmental obligations are in place and that these are transparent and enforceable. As detailed elsewhere in this submission TEC also believes that the licence has a crucial role to play in ensuring that all aspects of State Water's operations can be assessed in the operational audit.

For this reason, TEC urges the Tribunal to ensure that key requirements (including environmental obligations) of other regulatory instruments are included in the Initial Operating Licence. The purpose of such an arrangement is not to usurp the role of

other agencies as regulators but simply to ensure that no aspects of State Water's performance are invisible to the operational audit process. To this end the requirements of the Interim Operating Licence in this regard should be retained and strengthened.

As noted elsewhere in this submission TEC supports the proposed standards and indicators detailed in the discussion paper. We welcome requirements relating to cold water pollution downstream of storages as this is a serious environmental issue effecting riverine habitat and native fish species. TEC recommends that requirements also be introduced to implement a strategy to deal with the related issue of low dissolved oxygen content of water release from dams. This can be a problem if released water is drawn from the lower level of dams. Requirements to implement a management strategy for both cold water pollution and low dissolved oxygen would provide a stimulus for the development of variable off takes on dams to ensure that water can be released from the most appropriate levels of storages.

### **Environmental Management Plan**

TEC strongly supports inclusion of a requirement in the Initial Operating Licence for State Water to develop a comprehensive Environmental Management Plan (EMP). We welcome the requirement in the Interim Licence that the EMP include an energy management policy and apply appropriate targets of the NSW Government Energy Management Policy. Given the energy intensive aspects of many of State Water's activities (dam operation, pumping etc) these requirements should be retained in the Initial Licence.

In the interests of transparency and public accountability the licence should also require State water to consult with stakeholders in developing the EMP, report regularly on performance against the EMP and subject the EMP to periodic review.

TEC strongly supports the Tribunal's view that the Initial Operating Licence should require State water to record its performance against environmental indicators that:

- measure the environmental impacts of State Water's core activities (the capture, store and release of water)
- reflect fundamental aspects of its environmental performance
- are relevant and understandable to the community and stakeholders
- are cost effective to measure and report
- are consistent overtime, to allow a comparison of performance and identification of any trends in performance (IPART, 2004)

### **Memoranda of Understanding (MoU)**

TEC believes that requirements in the Interim Licence for State Water to enter into and abide by MoUs with DIPNR, DEC and NSW Fisheries should be retained. We believe that, in the interests of transparency and accountability, the licence should include the key obligations, targets and timelines of MoUs and make performance against them subject to consideration in the operational audit. The report of the Sydney Water Inquiry following the 1998 water crisis highlighted limitations in

auditing performance against MoUs due to a lack of targets and timelines (McClellan, 1998). Placing key obligations, targets and timelines of MoUs in the Licence ensures that performance against MoUs can properly be assessed as part of the Operational Audit.

## **AUDITING THE OPERATING LICENCE**

TEC appreciates the Tribunal's desire to streamline audit requirements for State Water. In our submission to the review of the SWC and SCA licences TEC accepted that there may be merit in providing 'audit holidays' for parts of the Licence in high levels of performance have been shown in the preceding period (TEC, 2004). We are less comfortable, however, with such an arrangement being provided for State Water at this point in time. Unlike SWC and SCA, State Water does not have history of operational audits showing strong and consistent compliance with various aspects of the Operating Licence.

We believe that the approach of providing 'audit holidays', where an initial comprehensive audit is followed by targeted audits in subsequent years, may be appropriate in the future. We would not, however, support this arrangement until such time as State water has built a record of strong compliance in a number of areas.

## **REFERENCES**

Independent Pricing and Regulatory Tribunal (2004) "Review of the Operating Licence for State Water – Issues Paper", IPART

Independent Pricing and Regulatory Tribunal (2003) "End of Term Review of the Operating Licences for Sydney Water Corporation and the Sydney Catchment Authority - Issues Paper", IPART

McClellan, P. (1998) "Sydney Water Inquiry Final Report", Sydney Water Inquiry.

Total Environment Centre (2004) "End of Term Review of the Operating Licence for Sydney Water Corporation - Submission by Total Environment Centre to the Independent Pricing And Regulatory Tribunal", TEC.