

The Lakes R Us application for declaration of a water storage and transport service

ISSUES PAPER

APRIL 2005

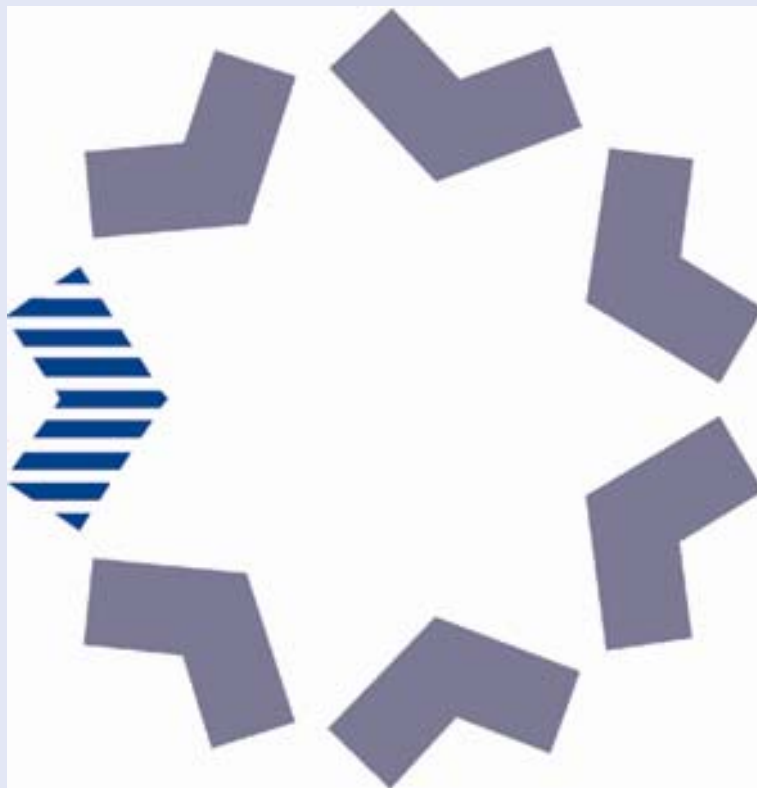


Table of contents

Making a submission	iii
Declaration of a service	iv
The application	5
The services, the facilities and the service providers	6
Criterion (b): the uneconomical to develop another facility test	15
Criterion (a): The promotion of competition test	20
Criterion (c): The national significance test	25
Criterion (d): The health and safety test	26
Criterion (e): The effective access regime test	28
Criterion (f): The public interest test	30
Duration of declaration	33
Appendix I: Sections 44F & 44G of part IIIA	35
Appendix II: Competition Principles Agreement (extract)	37
Appendix III: Water management, sharing and use	40
Council publications related to declaration matters	47
References	48

Making a submission

The National Competition Council (Council) uses a public process to assess matters under the National Access Regime. It welcomes submissions on any matters relevant to the Lakes R Us application for declaration of certain water storage and transport services.

In making a submission interested parties may wish to refer to the Council's guide to The National Access Regime: a guide to part IIIA of the *Trade Practices Act 1974* (Part B) and recommendations on applications for declaration it has received. A list of relevant publications on the Council's website is provided at page 47.

The Council will post all submissions received on its website following the closing date for submissions (31 May 2005).

The Council may give less weight to information it is unable to test through a public process. It therefore accepts confidential material only under certain circumstances. Parties wishing to submit information on a confidential basis should first discuss the matter with the Council secretariat (see contact details below). Any confidential information submitted must be supported by a written statement detailing the nature and reasons for confidentiality.

There is no specified format for submissions. The Council would, however, appreciate receiving at least one copy of the submission in electronic form, preferably in rich text format and sent by email. All submissions should be addressed to:

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The closing date for submissions is Tuesday 31 May 2005.

Any queries should be directed to Ruth Thomson on (03) 9285 7787 or via email to info@ncc.gov.au.

Declaration of a service

Declaration is a pathway available under part IIIA of the *Trade Practices Act 1974* (TPA) for parties to negotiate the use of natural monopoly infrastructure services that create a bottleneck to competition in other markets. If declaration occurs, third party access seekers acquire a legal right to negotiate access to the service with the provider; and, if necessary, have requests for access determined through arbitration by the Australian Competition and Consumer Commission.

A business wanting access to a particular service can apply to the Council to have the service declared. The Council considers the merits of the application against the declaration criteria before forwarding a recommendation to the designated Minister who decides whether or not to declare the service (box 1). Section 44K of the TPA provides for the applicant or service provider to apply to the Australian Competition Tribunal (the Tribunal) for review of the Minister's decision.

Box 1: The TPA declaration criteria¹

The Council cannot recommend that a service be declared unless it is satisfied that all criteria in s. 44G(2) of the TPA are met:

- (a) *that access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service*
- (b) *that it would be uneconomical for anyone to develop another facility to provide the service*
- (c) *that the facility is of national significance, having regard to*
 - (i) *the size of the facility or*
 - (ii) *the importance of the facility to constitutional trade or commerce or*
 - (iii) *the importance of the facility to the national economy*
- (d) *that access to the service can be provided without undue risk to human health or safety*
- (e) *that access to the service is not already the subject of an effective access regime and*
- (f) *that access (or increased access) to the service would not be contrary to the public interest.*

The Council must also consider, in the case of services provided by multiple facilities, whether it would be economical for anyone to develop another facility that could provide part of the service (s. 44F(4)) — see Appendix I.

¹ The Council begins the assessment of the declaration criteria by considering criterion (b) because this criterion focuses on whether the relevant facility has natural monopoly characteristics, conferring market power on its owner.

The application

On 8 October 2004, the Council received an application under part IIIA of the TPA from Lakes R Us Pty Ltd for a recommendation to declare water storage and transport services provided by facilities operated by Snowy Hydro and State Water Corporation. On 12 January 2005, Lakes R Us provided supplementary material to complete its application.

Lakes R Us is a venture company that has been set up specifically to manage unused water allocations in the Snowy Scheme. It proposes to do this by using the excess storage capacity (vacant air space) of certain Snowy Hydro facilities (namely Lake Eucumbene, Lake Jindabyne, Talbingo Reservoir, Tantangara Reservoir and Jounama Pondage).

Lakes R Us proposes to store up to 800 000 megalitres of water sourced from savings made by downstream entitlement holders. Under its proposal, Lakes R Us seeks to transport the unused water into the Snowy Hydro facilities by swapping it with water that would otherwise be released by Snowy Hydro as part of its water release activities in the following water year.

Lakes R Us seeks access to the excess capacity of the Snowy Hydro storages for up to 30 years. It proposes that stored water would be released on demand for use by the entitlement holders, used to provide a water loan service or traded (including for use in electricity production).

Lakes R Us considers that its proposal will benefit Murray and Murrumbidgee irrigators. It says that irrigators will be able to store their unused water allocations in Snowy Hydro facilities for use in subsequent years allowing irrigators to better plan their operations leading to productivity growth and increased competition. For example, Lakes R Us considers that production guarantees for the supply of commodities produced from agriculture requiring the certainty of irrigation water will be more readily entered into and that this, in turn, will increase competition in the supply of these commodities in Australia and internationally.

Lakes R Us is seeking the following terms and terms and conditions of access:

- a charge of no more than \$1 per megalitre per year for using the vacant airspace in Lake Eucumbene
- first priority access to water storage capacity that is in excess of Snowy Hydro's requirements to enable storage of up to 800 000 megalitres of water
- if the total storage space available to Snowy Hydro becomes full and a spill occurs, subject to notification in advance, the volume of water that spills would be deducted from the water stored by Lakes R Us with Snowy Hydro.

The Council does not consider the terms and conditions of access. Declaration under part IIIA provides any third party — not just Lakes R Us — with a legally enforceable right to negotiate the terms and conditions of access to the declared services. If negotiation fails, then third parties may ask the Australian Competition and Consumer Commission to arbitrate the matter.

The services, the facilities and the service providers

In considering an application for declaration of a service it is necessary to define the service(s) subject to declaration, determine the facilities used to provide the service(s) and identify the service provider(s) that owns or operates the facilities.

Services sought to be declared

Section 44B of the TPA states that a ‘service’ means a service provided by means of a facility and includes:

- (a) *the use of an infrastructure facility such as a road or railway line*
- (b) *handling or transporting things such as goods or people*
- (c) *a communications service or similar service*

but does not include:

- (d) *the supply of goods*
- (e) *the use of intellectual property*
- (f) *the use of a production process*

except to the extent that it is an integral but subsidiary part of the service.

The relevant service is the thing that is bought and sold, or for which there are potential transactions (Duke EGP decision (May 2001), para 68). The way in which a service is defined and delineated must be commercially meaningful.

Lakes R Us seeks access to a ‘water storage and transport service’ from specified storage facilities in the Snowy Scheme to exit points in the Murray and Murrumbidgee rivers where the water can be extracted by water users. Lakes R Us is seeking declaration of a ‘water storage and transport service’ by facilities operated by Snowy Hydro and State Water.

The water storage and transport service provided by Snowy Hydro is:

- a water storage service provided by the vacant air space of Lake Eucumbene, Lake Jindabyne, Talbingo Reservoir, Tantangara Reservoir and Jounama Pondage
- a water transport service provided by a series of tunnels and channels in the Snowy Scheme to transport water from the specified water storage facility to Blowering Dam or to an exit point in the Murray River
- a water transport service through Blowering Power Station
- a connection service provided via valves, switch gear and all related equipment and systems for the transport of water through the facilities.

The water storage and transport service provided by State Water is:

- a water release mechanism at Blowering Dam for transporting water released by Snowy Hydro through Blowering Dam and the watercourse to the exit points in the Murrumbidgee River where the water can be extracted by water users
- a connection service provided via valves, switch gear and all related equipment and systems for the transport of water through the facilities.

Because the services that are the subject of the declaration application are provided by two entities, the Council will need to consider the application as multiple applications — one for each separable service provided by each service provider.

The Council will also need to consider whether the components of the services provided by each service provider are integral to the delivery of each other, such that it is appropriate to consider each as a single bundled service or define a number of services, for example, on functional and/or geographical bases. This will involve consideration of, among other things, whether they are separate services that could be bought or sold or could be subject to transactions in their own right. This could mean, for example, the Council considering the water storage and transport service relevant to the Murrumbidgee system separately from the water storage and transport service relevant to the Murray system.

Facilities providing the services

Both the declaration criteria and the definition of service in the TPA and the definition of service in s. 44B refer to the facility that provides a service. The TPA does not define the term ‘facility’, although it cites examples, including roads and railway lines and the handling or transporting of things such as goods or people. In the Sydney Airport decision, the Tribunal said that ‘a facility for the purposes of the Act is a physical asset (or set of assets)

essential for service provision’ (para 82). The relevant facility is therefore comprised of ‘the minimum bundle of assets required to provide the relevant service subject to declaration’ (para 192).

Lakes R Us states that it requires access to the Snowy Mountains Hydro-Electric Scheme (Snowy Scheme). In its application for declaration (including the supplementary submission) Lakes R Us identifies specific facilities owned and operated by Snowy Hydro and State Water that provide the services to which it seeks access. The facilities and related services identified by Lakes R Us are summarised in box 2.

Box 2: Facilities and related services subject to the declaration application

Lakes R Us identified a number of specific Snowy Hydro and State Water facilities that it considers are required for the provision of the component water storage and transport services that it seeks to be declared. These can be summarised as follows:

Snowy Hydro facilities

1. Lake Eucumbene

- Lakes R Us seeks to store water in Lake Eucumbene using air space above the levels set from time to time by Snowy Hydro’s water management and operating rules. It seeks to transport of water from storage into the Murray River by way of the Eucumbene-Snowy Tunnel, Snowy-Geehi Tunnel, Murray 2 Pondage, Murray 1 Power Station, the tunnel to Khancoban Pondage and Murray 2 Power Station. It also seeks transport of water from storage to the Tumut River, Blowering Dam and Murrumbidgee River by way of the Eucumbene-Tumut Tunnel, Tumut Pond Reservoir, Tumut 1 Pressure Tunnel, Tumut 1 Power Station, Tumut 2 Pondage, Tumut 2 Pressure Tunnel, Tumut 2 Power Station, Tumut 2 Tail Water Tunnel, Talbingo Reservoir, Tumut 3 Power Station, Jounama Pondage to Blowering Reservoir. It also seeks transport of water through the Blowering Power Station.

2. Lake Jindabyne

- Lakes R Us seeks to store water in Lake Jindabyne using the air space above the levels set from time to time by Snowy Hydro’s water management and operating rules. It seeks transport of the water from storage into the Murray River by way of the Jindabyne Pumping Station, Snowy-Geehi Tunnel, Murray 2 Pressure Tunnel, Murray 2 Pondage, Murray 1 Power Station, Murray 2 Pressure Tunnel, Murray 2 Power Station and Khancoban Pondage.

3. Talbingo Reservoir

- Lakes R Us seeks storage water in Lake Eucumbene using air space above the levels set from time to time by Snowy Hydro’s water management and operating rules. It seeks to transport of water from storage into the Murray River by way of the Eucumbene-Snowy Tunnel, Snowy-Geehi Tunnel, Murray 2 Pondage, Murray 1 Power Station, the tunnel to Khancoban Pondage and Murray 2 Power Station. It also seeks transport of water from storage to the Tumut River, Blowering Dam and Murrumbidgee River by way of the Eucumbene-Tumut Tunnel, Tumut Pond Reservoir, Tumut 1 Pressure Tunnel, Tumut 1 Power Station, Tumut 2 Pondage, Tumut 2 Pressure Tunnel, Tumut 2 Power Station, Tumut 2 Tail Water Tunnel, Talbingo Reservoir, Tumut 3 Power Station, Jounama Pondage to Blowering Reservoir. It also seeks transport of water through the Blowering Power Station.

4. Tantangara Reservoir

- Lakes R Us seeks to store water in Tantangara Reservoir using the air space above the levels set from time to time by Snowy Hydro’s water management and operating rules. It seeks transport of the water from by way of the tunnel between Tantangara Reservoir and Lake Eucumbene.

(continued)

Box 2 continued

5. Jounama Pondage

- Lakes R Us seeks to store water in Jounama Pondage using the air space above the levels set from time to time by Snowy Hydro's water management and operating rules. It seeks transport of the water in storage to Blowering Dam by way of the Jounama Pondage dam wall.

6. Other facilities

- Lakes R Us identifies other general assets making up the facilities that are necessary for providing the water storage and transport services. These include connection assets such as valves, switch gear and all related equipment and systems as well as all other assets that are an integral but subsidiary part of the service.
- Lakes R Us identifies the need for a water transport service through Island Bend Reservoir, Geehi Reservoir and Khancoban Pondage.

State Water facilities

7. Blowering Dam

Lakes R Us seeks a water release mechanism at Blowering Dam to transport water released from Lake Eucumbene and Jounama Pondage through the water course and Blowering Dam to allocation entitlement holders in the Murrumbidgee River.

Source: Lakes R Us 2004, Lakes R Us 2005

The identified facilities comprise most of the Snowy–Tumut Development and Snowy–Murray Development that make up the Snowy Scheme² including Blowering Power Station and the adjunct facility of Blowering Dam (owned by State Water) (see figure 1). These facilities are located in southern New South Wales. Lakes R Us excludes from the description of the Snowy Hydro facilities the Guthega facilities, the direct diversion into the Murrumbidgee River that provides water to Burrinjuck Dam, the Swampy Plain diversion that delivers water to Khancoban Pondage and Hume Dam, the Tooma Dam and Tooma–Tumut Tunnel assets, and the section of upper Tumut River flowing into the Tumut Pondage.

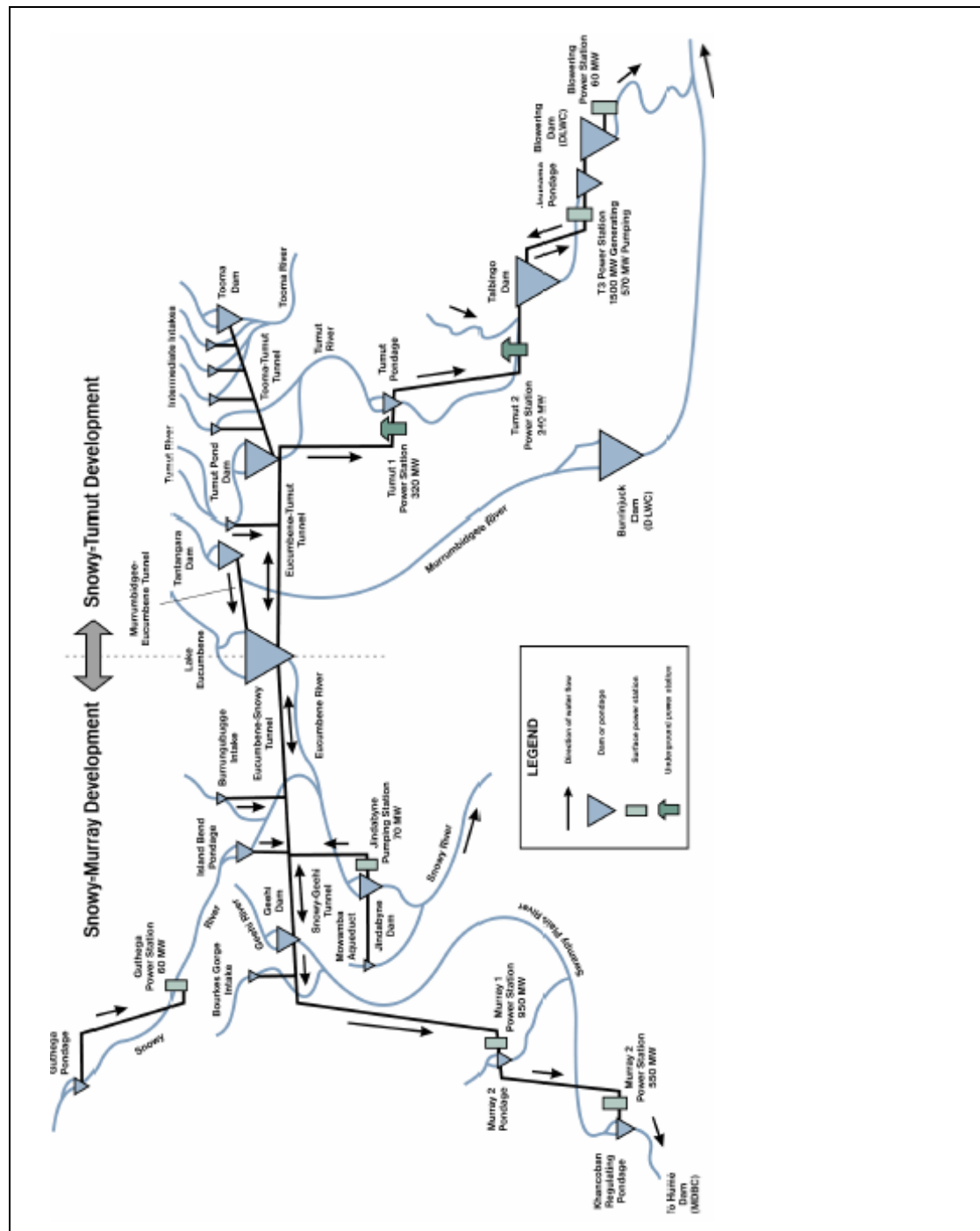
The identified Snowy Hydro facilities appear to form the interconnected and integrated parts of the regulated water supply system for the Murray and Murrumbidgee rivers. The facilities identified are also the main infrastructure that Snowy Hydro uses for power generation.

The Council will need to consider which facilities form part of the minimum bundle of assets required to provide the services to which Lakes R Us is seeking access. In particular there is a question as to whether Blowering Dam and Blowering Power Station are required to ensure water is released for downstream users. State Water releases water from Blowering Dam to meet orders received from irrigators. It does this in accord with its regulatory obligations and the requirements of the water sharing plan for the Murrumbidgee regulated river. The water releases from Blowering Dam determine when and how much water Snowy Hydro can put through the turbines of Blowering Power Station. Snowy Hydro and State Water may

² The Snowy Scheme comprises the works owned and operated by Snowy Hydro in the Snowy Mountains region.

have little discretion over the volume and timing of water releases through these facilities.

Figure 1: Diagrammatical layout of the Snowy Scheme and Blowering Dam



Source: DITR (Department of Industry Tourism and Resources) 2000, part A, p. 38

There may be facilities not identified by Lakes R Us that form part of the minimum bundle of assets that provide the services subject to the declaration application. If, for example, Blowering Dam is necessary to the provision of the water storage and transport service sought by Lakes R Us, then the question arises as to whether other State Water assets are also needed. New

South Wales irrigators on the Murrumbidgee regulated river receive a water allocation based on water stored in Blowering and Burrinjuck dams and other inflows into the system. It is possible therefore that Burrinjuck Dam and possibly the natural waterways are so integral to the water storage and transport service that it is necessary to include it in the minimum bundle of assets. Similarly, there may also be other assets owned by Snowy Hydro that form part of the minimum bundle of assets.

Providers of the facilities

Snowy Hydro owns and operates the Snowy Scheme. It is the provider of the water storage and transport service of this facility whether the facility is defined as the entire scheme or specific assets owned by Snowy Hydro such as those identified by Lakes R Us (box 2). Snowy Hydro is a corporation jointly owned by the Australian (13 per cent), New South Wales (58 per cent) and Victorian (29 per cent) governments. It operates the Snowy Scheme facilities situated in southern New South Wales in accord with the Snowy Water Licence issued under part 5 of the Snowy Hydro Corporation Act. Its operations comprise the generation and marketing of flexible and renewable electrical energy, ancillary services and related electricity products, and the storage and diversion of bulk water to the Murray and Murrumbidgee rivers (Snowy Hydro Limited 2004, p. 3).

State Water owns and operates Blowering Dam. It is the provider of the water storage and transport service at Blowering Dam. State Water, is a New South Wales Government owned corporation established under the *State Water Corporation Act 2004*. It incorporates into a single business all of the State's bulk water delivery functions outside of the areas of operation of the Sydney Catchment Authority, Sydney Water Corporation, Hunter Water Corporation and other water supply authorities. State Water provides water to irrigation corporations, country town water supply authorities, farms, mines and electricity generators, by releasing flows from its dams and using natural streams as conduits. It is also responsible for delivering environmental flows in regulated rivers.

Are the services covered by part IIIA?

Snowy Hydro has advised the Council that it stores and transports water through the Snowy Scheme to maximise the volume of water inflows so that it has sufficient water to produce hydroelectricity and electricity risk management services for the National Electricity Market (NEM). Snowy Hydro therefore considers that the Council's power to make a recommendation to the Minister in respect of declaration of the water storage and transport service is prohibited because it is part of a production process (Snowy Hydro Limited 2005). Part IIIA excludes from declaration services that use a production process except to the extent that it is an integral but

subsidiary part of the service (s. 44B). State Water has not raised similar concerns about its services.

What is a production process?

In *Hamersley Iron Pty Ltd v National Competition Council [1999] FCA 867* the Federal Court of Australia defined a production process as ‘a series of operations by which a marketable commodity is created or manufactured’. The Hamersley decision determined that a production process is complete once a commodity exists that is capable of being the subject of market transactions (rather than whether such transactions exist). The Federal Court held that Hamersley Iron’s use of its railway line was a component of an integrated set of operations that constitute a production process.

The Council further considered the matter of a production process in relation to the Fortescue Metals Group (FMG) application for the declaration of services provided using parts of the Mount Newman and Goldsworthy railway lines in Western Australia. The Council applied the test set out by the Hamersley decision but noted difficulties in applying the test. The Council considers that part IIIA is based upon economic concepts and that economics should inform interpretation of the section. It therefore considers that a production process exists if the transaction costs and other costs to the economy as a whole of decomposing a set of technically interdependent activities that are aimed at converting inputs into outputs exceed the gains of doing so. For a production process to exist it needs to be shown that separating the activities imposes costs that cannot be recompensed through access prices and conditions. The interrelationship between a set of activities should therefore be more than technical interdependence.

In the FMG matter, the Council determined that the Mount Newman line was not a production process (NCC 2004). On 24 December 2004, BHP Billiton Iron Ore applied to the Federal Court for a declaration that the use of the Mount Newman railway line is not a service for which declaration under part IIIA can be sought. The proceedings are continuing.

Are the services part of a production process?

Snowy Hydro is a multi-service provider jointly producing hydroelectricity, electricity risk management products and water supply services. Snowy Hydro produces electricity for sale in the NEM as water passes through each turbine in the network. Snowy Hydro’s risk management products are essentially financial instruments in the form of bilateral contracts with individual customers across the NEM with the backing of Snowy Hydro’s electricity generating capacity. The water Snowy Hydro collects is not treated and is unchanged as result of its use for electricity generation.

The water is marketed throughout the network. Water access entitlements are sold under licence to local water users in the Snowy catchment. Also,

under the Snowy Corporatisation Act and Snowy Water Licence, Snowy Hydro may negotiate a fee for some water supply services. Where local water users (those in the Snowy catchment) and Snowy Hydro are unable to agree on a fee for the water supplied, the fee is determined by the Independent Pricing and Regulatory Tribunal (IPART). The fee set by IPART must be no higher than the level that compensates Snowy Hydro for the loss from reduced electricity generation (Snowy Hydro Corporatisation Act, s. 32). Where Snowy Hydro supplies water to users downstream from the Snowy catchment the fee is open to negotiation without regulatory supervision.

The decision maker

The New South Wales Government owns 58 per cent of Snowy Hydro and fully owns and operates State Water. Both Snowy Hydro and State Water operate under New South Wales legislation.

Accordingly, the Council considers that the decision maker for the purposes of the Lakes R Us application for declaration of the water storage and transport services is the Hon. Robert Carr, MP. Premier of New South Wales (s. 44D(2) of the TPA).

The Council seeks comments on:

Defining the services

- *Whether it is appropriate to distinguish an integrated water storage and transport service provided by Snowy Hydro for the purpose of part IIIA? Alternatively is it appropriate to consider the component services separately or redefine them, including on functional and/or geographical bases? Should for example the service of water storage be distinguished from the service of water transport and the service of water connection? Should services relevant to the Murray River system be distinguished from those relevant to the Murrumbidgee River system?*
- *Whether it is appropriate to distinguish an integrated water storage and transport service provided by State Water for the purpose of part IIIA? Are there separate components of the water storage and transport service that should be considered services in their own right for the purposes of part IIIA?*
- *The extent to which the definition of a water storage and transport service is generally understood and accepted within the water industry in commercial and regulatory contexts?*

Defining the facilities

- *What is the nature of the specific facilities and assets required to provide each water storage and transport service and ownership of these assets.*
- *Whether there are any 'other associated facilities' that are needed to store and transport water from the Snowy Scheme to water users along the Murray and Murrumbidgee river systems?*
- *What is the extent of physical interconnection and operational integration and coordination among the various facilities and services of the Snowy Scheme?*
- *What (if any) would be the practical consequences of declaring services provided by defined facilities within the Snowy Scheme (such as the minimum bundle of assets identified by Lakes R Us in box 2), as opposed to the services provided by the entire Snowy Scheme network?*
- *What is the current degree of physical interconnection and operational integration and coordination between Burrinjuck and Blowering dams?*
- *Whether it is appropriate to distinguish water storage and transport services from Blowering Dam in isolation of Burrinjuck Dam or other natural waterways that form part of the Murrumbidgee regulated river managed and controlled by State Water?*

Coverage under part IIIA

- *Is the water storage and transport service provided by Snowy Hydro a service within the meaning of s.44B of the TPA or does the production process exception at paragraph (f) apply?*
- *Are there parts of the Snowy Hydro facility not involved in electricity production that could be used to provide water storage and transport services?*
- *Are there any other circumstances in which the production process exception at paragraph (f) could be considered to apply?*

Criterion (b): the uneconomical to develop another facility test

Criterion (b) tests whether it would be uneconomical to develop another facility to provide the service to which access is sought (box 1, p. iv). This is likely to be the case where the facility exhibits natural monopoly characteristics — that is, it is able to serve the range of reasonably foreseeable demand for its services at less cost than two or more facilities.

Lakes R Us states that the Snowy Scheme is an infrastructure landmark in Australia. It states that there is no other facility that can economically and efficiently deliver water into both the Murray and Murrumbidgee river systems. Moreover, because the Snowy Scheme captures all the available water in the Snowy catchment it would not be viable to build an alternative storage facility in the area. Lakes R Us considers that the Snowy Hydro facilities are underused and that governments would not approve construction of an alternative storage facility in Kosciuszko National Park. Lakes R Us further considers that it would not be viable to build a pipeline to transport water as an alternative to using the natural waterways due to its cost and possible adverse environmental consequences.

Lakes R Us considers that there are no alternative high quality water storage facilities available that have capacity to divert large volumes of water into the Murray and Murrumbidgee river systems. Lakes R Us notes that evaporation rates in the Snowy Hydro storage facilities are lower than for other dams in the area. Lakes R Us considers that farm dams do not provide a viable alternative to the Snowy Hydro dams because farm dams are expensive to build and may displace usable farmland resulting in productivity losses. Moreover, there is no available mechanism for trading or transferring water originating from farm water storage.

Snowy Hydro contends that criterion (b) is not satisfied because:

1. alternative facilities exist, or could be developed, that can economically and efficiently deliver water into the Murray and Murrumbidgee river systems
2. existing water trading schemes provide irrigators with the same ability to increase the yield of their current water allocations as the Lakes R Us proposal.

Do the facilities exhibit natural monopoly characteristics?

The Snowy Scheme is a significant engineering structure, consisting of 16 major dams and an extensive network of interconnected above and below

ground tunnels and aqueducts. To construct this facility today would cost in excess of \$6 billion (Whelan 1997, p. 9600).

The Snowy Scheme integrates hydroelectric generation (sold into the NEM) and diverts large volumes of water between the Murray, Murrumbidgee and Snowy river systems.³ Combining water collection, storage and transport services provides opportunities to better manage and coordinate services providing significant opportunities to achieve economies of scale and scope. Similarly, hydroelectricity generation, because it uses water but does not exclude use of that water further downstream, also creates significant opportunities for economies of scale and scope from the joint production of electricity and water services. There is, however, often a tension between the best timing of water releases for electricity generation and for irrigation purposes. The presence of hydroelectricity facilities alongside most irrigation schemes indicates that despite the possible tensions between delivery of the two services significant economies of scale and scope remain (Tasman Asia Pacific 1997).

Of issue is whether the economies of scale and scope continue over the reasonably foreseeable level of demand for the water storage and transport service such that Snowy Hydro is able to provide its service at less cost than multiple providers. Demand for Snowy Hydro's water storage and transport service is derived from demand for water in the Murray, Murrumbidgee and Snowy river systems and demand for electricity. Both water and energy are essential services and demand is strongly influenced by demographic patterns, weather, production patterns and general economic conditions.

In addition to determining the reasonably foreseeable demand for the water storage and transport service, it is necessary to consider whether the Snowy Scheme has sufficient capacity to meet that demand. In relation this matter, the key limiting factor to meeting demand for water and hydroelectricity is weather patterns and rainfall, which determines availability of the water input. Snowy Hydro currently collects and diverts all available water in the Snowy catchments. It therefore operates at maximum achievable scale. At this scale of operation the volume of water captured in the Snowy Scheme has rarely approached maximum storage capacity (figure 2). The availability of water also limits electricity generating. While the Snowy Scheme has electricity generating capacity of 3736 megawatts (MW), on average only about 15 per cent this capacity is used (DITR 2000).

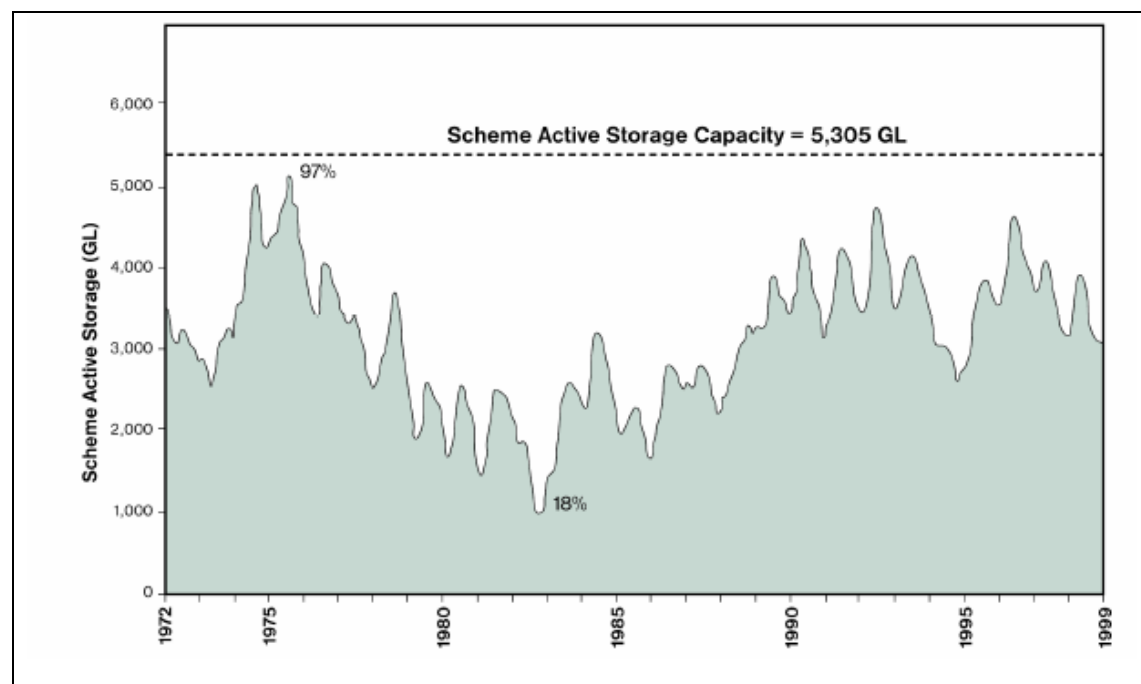
Moreover, all water released from the Snowy Scheme is fully allocated to water users including the environment. While the allocation of water among different groups of users may vary over time it is likely that the water in the Murray and Murrumbidgee and Snowy rivers will continue to be fully

³ Under the current arrangement Snowy Hydro must in each water year (from 1 May to 30 April) provide about 9 gegalitres to the Snowy River, 1026 gegalitres from the Snowy-Tumut Development for the Murrumbidgee River and 1062 gegalitres from the Snowy-Murray Development for the Murray River.

allocated over the long term. There is currently excess demand for water in these river systems. Government and private sector initiatives are aiming to improve water efficiency to this mitigate excess demand for irrigation water and to increase environmental flows including for the Murray and Snowy rivers.

Australian has experienced strong growth in demand for electricity over the past 40 years and current projections indicate that this pattern is likely to continue. Moreover, over the short to medium term NEMMCO (National Electricity Market Management Company) forecasts that there could be some power shortages in Victoria, South Australia and New South Wales during the peak summer period (NEMMCO 2004).

Figure 2: Snowy Scheme storage and release patterns



Source: DITR 2000, p. 45

Blowering Dam has gross capacity to store 1 632 400 megalitres. State Water uses Blowering Dam in conjunction with Burrinjuck Dam to capture available water in upper Murrumbidgee and Tumut river system, including water released by Snowy Hydro. The combined gross storage capacity of the two dams is 2 654 000 megalitres. This provides sufficient capacity to store water for an irrigation season with a small contingency reserve.

The State Water Corporation provides bulk water delivery services and related services for irrigation corporations, country town water supply authorities, farms, mines and electricity generators in accord with its statutory obligations. Combining these services provides opportunities for administrative and capital savings and allows for integrated management of water storage, transport and associated services. This likely provides significant opportunities to achieve economies of scale and scope.

Demand for the water storage and transport service from Blowering Dam is primarily derived from demand for water. Apart from rainfall, State Water's capacity to meet demand is constrained by regulation, which determines the volume of water released from the Snowy Scheme that can be captured by State Water and the allocation of available water to downstream users.

Alternative facilities

Lakes R Us seeks to compete in the water lending and trading market supplying water to users in the Murray and Murrumbidgee river systems. These systems are supplied by water collected throughout the catchment areas — not only in the Snowy Scheme. Snowy Hydro therefore considers that Lakes R Us could achieve its objective using alternative facilities elsewhere in the river systems or via existing water trading mechanisms. It cites as examples the Barren Box Swamp located near Griffith and an off-stream storage facility in the Murrumbidgee catchment being investigated by DIPNR. (Snowy Hydro Limited 2005) It also considers that existing water trading schemes could be used to achieve the outcome sought by Lakes R Us. There may also be other options. The CSIRO has investigated the feasibility of pumping water into aquifers to store water without having to construct costly surface dams (CSIRO 2002). The Murray–Darling Basin Commission is investigating opportunities for increasing interstate trade for the Murray River system.

In putting forward such arguments Snowy Hydro is seeking a broad definition of the relevant water storage and transport service. Such an approach does not accord with the point-to-point approach adopted by the Tribunal in the Duke EGP decision. In that decision, the Tribunal concluded that '[e]very haulage service will of necessity be from one point to another. That is the commercial service actually provided by the ... operator to its customers' (para 69). Applying the Tribunal's point-to-point approach, the principal service provided by Snowy Hydro is the storage of water in the Snowy Scheme and transport of that water through the scheme to the end of the works.

The Council sees difficulties with applying a broader service definition in the context of criterion (b). First, the application of the Tribunal's natural monopoly test to the broadly defined service would require considerations of capacity and foreseeable demand across the Murray and Murrumbidgee regulated river systems. This would reveal little if anything about whether a particular water works within that system satisfies the natural monopoly test — which is the focus of the declaration provisions of part IIIA of the TPA.

A second difficulty is that criterion (b) is limited to considering whether it would be uneconomic to develop another facility to provide the relevant services. Part IIIA does not precisely define the term facility, but cites examples such as roads and the transport of goods (see p. 7). In the Sydney Airport decision the Tribunal said that 'a facility for the purposes of the [TPA] is a physical asset (or set of assets) essential for service provision' (para 82). It

is unclear to what extent criterion (b) allows consideration of water deals and other financial arrangements in determining whether it is uneconomic to develop another facility.

The Council is of the view that the issue is whether the facility the subject of the application for declaration can meet the reasonably foreseeable level of demand for the water storage and transport service provided by it, at less cost than multiple providers. This assessment includes consideration of the cost functions of alternative facilities able to provide or be developed to provide the service.

The issue as to whether there are alternative services that may provide a substitute for Snowy Hydro's water storage and transport service goes to the crucial question of whether the service provider is constrained in the exercise of its presumed monopoly market power. The Tribunal has repeatedly considered such a question under criterion (a), having first established under criterion (b) whether the facility exhibits natural monopoly characteristics and as such whether there is a presumption of natural monopoly market power (see Duke EGP and Sydney Airport decisions).

The Council proposes to consider these issues fully under criterion (a).

The Council seeks comments on:

- *What is the reasonably foreseeable demand for water in the Murray, Murrumbidgee and Snowy river systems over the medium to long term?*
- *Is it cheaper for one facility to meet the reasonably foreseeable demand for long term water storage and transport in the Snowy catchment than two or more facilities?*
- *What is the level of spare water storage, transport and electricity generating capacity (if any) in the Snowy Scheme facility operated by Snowy Hydro?*
- *What is the reasonably foreseeable demand for electricity over the medium to long term?*

Criterion (a): The promotion of competition test

Criterion (a) requires the Council to test whether access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service (box 1, p. iv).

In assessing whether criterion (a) is satisfied, the Council must:

- define the relevant market(s) in which competition may be promoted and verify that the market(s) are separate from the market for the service to which access is sought
- determine if access (or increased access) would promote a more competitive environment in the additional market(s). This requires an assessment of:
 - whether the incumbent has the ability and incentive to exercise market power to adversely affect competition in the dependent market(s)
 - whether the structure of the dependent market(s) is such that declaration would, by constraining the exercise of market power by the service provider, promote competition. High barriers to entry that are unrelated to the existence of the bottleneck facility may preclude any promotion of competition as a result of declaration.

The assessment for criterion (a) is concerned with the process of competition rather than the particular commercial interests or pursuits of individual competitors. The Council considers whether the incumbent service provider can, in the absence of access regulation, use its market power in the market for the service to adversely affect competition in a dependent market. If the service provider has the ability and incentive to do this, then regulated access may improve the environment for competition.

Lakes R Us states that it seeks access to water storage and transport services to compete in the water lending market. Lakes R Us considers that Snowy Hydro has a monopoly on the lending of large volumes of water. Access to the water storage and transport services would create opportunities to compete in this market. Lakes R Us also considers that access to the services, by promoting more efficient water use and associated water saving, will promote competition in:

- water trading markets by increasing the pool of water available for trade in New South Wales, Victoria, South Australia and, possibly, Queensland.
- agricultural product markets in Australia and elsewhere by encouraging Australian primary producers to enter into agricultural production guarantees

- peak time electricity generating markets by providing greater flexibility in the use of water to allow increased power generation during peak demand spikes in the national electricity market

Snowy Hydro argues that existing regulatory arrangements do not provide water users downstream of the Snowy Scheme with extractive rights to the water in the scheme and therefore third parties could not use its water storage and transport service even if the service is declared. Snowy Hydro also contends that the main benefits Lakes R Us believes will be generated by declaration are available via current water dealing arrangements. Snowy Hydro therefore considers that access would not promote competition in any market (Snowy Hydro Limited 2005).

Relevant dependent markets

The first step in assessing criterion (a) is to identify and define the relevant markets where there is a prospect for increased competition. The Tribunal has adopted the following definition of ‘market’:

A market is the area of close competition between firms or, putting it a little differently, the field of rivalry between them. (If there is no close competition there is of course a monopolistic market). Within the bounds of a market there is substitution — substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive. ... Whether such substitution is feasible or likely depends [on a number of factors] ... in determining the outer boundaries of the market we ask a quite simple but fundamental question: If the firm were to ‘give less and charge more’ would there be, to put the matter colloquially, much of a reaction? (Re Queensland Co-operative Milling Association Ltd (1976) 25 FLR 169 at 190).

Markets are normally defined by reference to four dimensions; namely the

- product dimension — the goods and/or services supplied and the sources or potential sources of substitute products
- functional dimension — the different vertical stages of production and/or distribution that comprise the field of competition
- geographic dimension — the areas that are supplied, or could be supplied, with the relevant product and to which consumers can practically turn
- temporal dimension — the period over which substitution possibilities need to be considered.

Lakes R Us has identified agriculture, electricity generation and water lending and trading markets as the relevant dependent markets. These markets are clearly separate to the water storage and transport services market.

It is not clear, however, if water lending is a separate dependent market or whether it is part of a broader water dealings market, providing a substitute for water trades (temporary or permanent) or licence conversions. The Council will need to determine whether there are features, such as differences in the means of exchange, the volume of water supplied, the source of the water or the timing of water releases that distinguish water lending from other types of water deals such that an identifiable water lending market exists. If water lending forms part of a contestable water dealings market there may be little scope for declaration to enhance the environment for competition in this dependent market.

Market power

It is only where the service provider has both the ability and incentive to use its presumed market power to adversely affect competition in the dependent market(s) that declaration will be likely to improve the conditions for competition in the market(s).

Snowy Hydro has an exclusive right to collect, store and divert water in the Snowy catchment for electricity generation and related activities. The Snowy Hydro Corporatisation Act and related water licence imposes minimum annual water release, and in some cases minimum monthly, release obligations on Snowy Hydro. It also allows Snowy Hydro to sell (or lend) water only under certain limited circumstances (see appendix III). Where Snowy Hydro has lent water, under what is commonly referred to as the 'Snowy borrow' it negotiates the fee. Historically fees have varied in a range of \$18–180 a megalitre.⁴ The Council will need to consider the extent to which Snowy Hydro, in the absence of declaration, has an ability and incentive to set fees for its Snowy borrow service above competitive levels and the effects of such pricing on dependent markets.

In considering whether Snowy Hydro has the ability and incentive to exercise market power, the Council will consider all relevant constraints, in particular regulatory constraints and the degree to which Snowy Hydro faces competition in the dependent markets from alternative water works and swaps. Other constraints, such as any countervailing power of Snowy Hydro's customers, are also relevant.

⁴ While not strictly comparable the trading prices for water and electricity provide some context to the cost of borrowing water from Snowy Hydro. Water can vary from a low of about \$20 a megalitre for temporary trades to over \$1000 a megalitre for permanent trades. Wholesale electricity prices are also volatile swinging from as low as about \$30 a megawatt hour to \$10 000 a megawatt hour in peak times.

The extent of Snowy Hydro's market power will likely differ in each dependent market, over time and depending on its customers. The Council will need to assess whether Snowy Hydro has enduring market power and whether there are other threats, such as the possible loss of its water licence, which could constrain Snowy Hydro's market power.

State Water is a monopoly provider of a range of bulk water services regulated by the State Water Corporatisation Act and State Water interim operating licence (see appendix III). IPART regulates (via a price cap) the charges that State Water levies for services related to the delivery of bulk water to farmers, irrigators, industrial users and town water suppliers. The Council seeks comments on State Water's ability and incentive to exercise market power.

Promotion of competition

Where a service provider has the market power to adversely affect competition in a dependent market, access will generally promote competition in that market by constraining the exercise of market power. Access can address the barrier to entry in the dependent market posed by the monopoly service provider's market power, and as such, promote competition in that market. However, this may not be the case where a dependent market itself is characterised by high barriers to entry that are unrelated to the existence of the bottleneck facility.

To promote competition in dependent markets Lakes R Us contends that it must be able to access water in the Snowy Hydro storage facilities and that this could be cost effectively achieved via a swap from an individual's water allocation for water that Snowy Hydro is normally obliged to release each year. The current water sharing arrangements may prevent this occurring and therefore prevent third party access from promoting competition.

The right to the control, use and flow of all water in rivers is vested in the Crown (Water Management Act, s. 392). Licensed water users, such as irrigators, have rights to access water at specified locations and times as specified in water plans (see Appendix III). In New South Wales licence holders also have a limited right to carry water over from one year to the next. Such rights are not available in Victoria and South Australia.

Snowy Hydro argues that the current legislative system for allocating extractive water rights does not permit third party access to water in the Snowy Scheme. Therefore effecting a water swap potentially requires extensive changes to several regulatory arrangements and changes to water access property rights. It potentially impacts on the water allocation system in New South Wales, and in the case of the Murray River, the Murray–Darling Basin Agreement and water allocation arrangements in Victoria and South Australia. It would, for example, affect the exclusive right granted to Snowy Hydro to collect, store and use the water in the scheme (this requires changes to the Snowy Corporatisation Act, including changes to the mirror

legislation in other jurisdictions, and the Snowy Water Licence (which operates for 75 years and includes a 50 year renewal option)). It may require changes to the Murray–Darling Basin Agreement where the swap and changes to the minimum release obligations affect the water sharing arrangements. Water released from the Snowy Scheme is currently shared equally between New South Wales and Victoria. It also potentially requires changes to existing water sharing plans where the water swap has the potential to alter water allocations for individual users along the Murray and Murrumbidgee river systems. If high security licence holders were able to store water in the Snowy scheme this may reduce the share of water available for allocation to general security entitlement holders, for example.

In assessing criterion (a) the Council will need to identify the regulations and any other constraints that could impede access and assess whether it is feasible to remove the barrier to entry through changes to the management and regulatory regime. The costs and benefits of such action would be assessed against the public interest test (criterion (f)).

The Council seeks comments on:

- *Whether the water lending market as defined by Lakes R Us in its application is a dependent market for the purposes of criterion (a)? How substitutable is water lending with other types of water dealing (temporary and permanent water trading and licence conversion)?*
- *Whether access would promote competition in the water lending, trading agricultural and electricity markets that depend on water storage and transport services from the Snowy Scheme.*
- *Whether access would promote competition in any other dependent markets. If so, explain the nature of these markets and the prospects for competition.*
- *Incentives and opportunities that exist for Snowy Hydro and State Water to exercise market power in dependent markets.*
- *Are there alternatives facilities that provide the water storage and transport services?*
- *Are there other mechanisms, such as water dealing, swaps and other financial instruments that affect the ability or incentive for Snowy Hydro and State Water to use market power to affect competition in dependent markets?*
- *Regulatory matters that will prevent the granting of access from increasing competition in dependent markets.*
- *Whether access would affect property rights to water?*
- *Any other impediments to competition that will prevent third party access to the Snowy Hydro services from increasing competition in dependent markets.*

Criterion (c): The national significance test

The national significance test under criterion (c) is a test of materiality that places less important facilities outside the scope of part IIIA (box 1, p. iv). While declaration is concerned with access to services rather than facilities, criterion (c) relates national significance to the facility providing the service.

Lakes R Us states that ‘[l]ittle need be said about the national significance of the Snowy system’ (Lakes R Us 2004, p. 10). Lakes R Us noted that the system affects three states and the Commonwealth directly and is a major part of the national electricity generation system. Snowy Hydro does not dispute the issue that its facility satisfies criterion (c).

Lakes R Us has identified the entire Snowy Scheme, Blowering Dam and Blowering Power Station as the facilities for delivery of the water storage and transport services that are the subject of its declaration application (see figure 1, p. 10).

There is compelling evidence that the Snowy Scheme, including the adjunct of Blowing Dam, is of national significance. There is a question as to whether Blowering Power Station forms part of the minimum bundle of assets required to store and transport water to the Murray and Murrumbidgee river systems (see the discussion on the facilities providing the services, pp. 7–11). The Council may need to consider whether Blowering Power Station is of national significance in its own right.

The size and importance of the Snowy Hydro facilities

The Snowy Scheme is recognised as one of the seven civil engineering wonders of the modern world. The scheme captures and diverts water within a catchment area of 5124 square kilometres. It consists of seven power stations, 16 major dams (with a total storage capacity of 7 000 gegalitres), 80 kilometres of aqueducts, 145 kilometres of interconnected tunnels and a pumping station (Snowy Hydro Limited 2004, p. 3). The scheme supplies about 3 per cent of the electricity in the National Electricity Market (NEM), which services about 7.7 million energy customers in Queensland, New South Wales, the ACT, South Australia and Victoria. Farmlands irrigated by contributions from the Snowy Scheme produce millions of dollars worth of crops every year, for national and international markets.

Blowering Power Station has an installed capacity of 80 megawatts and is part of the Snowy Scheme. Snowy Hydro does not control the volume and timing of water put through the turbines. Rather water passes through Blowering Power Station as it is discharged by State Water from Blowering Dam into the Tumut River.

The size and importance of the State Water facility

The State Water facility of Blowering Dam has a capacity of 1 628 000 megalitres and along with Burrinjuck Dam forms a critical component of the water regulation system of the Murrumbidgee river system. The two dams supply the irrigation system of the Murray Irrigation Area.

Management of the airspace of Blowering Dam is also critical to the provision of Snowy Hydro's ancillary services. State Water must reserve airspace to safely accommodate releases of water during emergency electricity generation.

The Council seeks comments on:

- *Are there any reasons why the Snowy Hydro facilities should not be considered to be of national significance in satisfaction of criterion (c)?*
- *Is the Snowy Hydro facility of Blowering Power Station an integral part of Snowy Scheme or separate from the scheme?*
- *Are there any reasons why the Blowering Power Station should not be considered to be of national significance in satisfaction of criterion (c)?*
- *Are there any reasons why the State Water facility of Blowering Dam should not be considered to be of national significance in satisfaction of criterion (c)?*

Criterion (d): The health and safety test

Under criterion (d) the Council must test whether access or increased access to a service provided by a facility poses a legitimate risk to human health or safety (box 1, p. iv).

Some facilities require a degree of spare capacity to provide appropriate safety margins. In addition, access to facilities may need to be governed by conduct codes and operational guidelines. For a service to be declared, access must be possible without compromising system and operational integrity and safe operability.

The existence of relevant safety regulations may suffice to satisfy criterion (d) where these regulations deal appropriately with any safety issues arising from access to the facility under consideration. Alternatively, criterion (d) may be satisfied where it is possible to address any safety concerns raised by access to the service through the terms and conditions on which access is provided.

Lakes R Us states that it is not aware of any human health or safety problems that may arise from access to the water storage and transport services provided by Snowy Hydro and State Water. Lakes R Us accepts, however, that the storage of water involves a risk that water may spill.

Snowy Hydro and State Water are subject to a comprehensive regulatory regime concerning health and safety matters across the spectrum of operations including rules relating to water, occupational health and safety, planning and the environment. Special arrangements are in place to minimise the risk of a spill.

- Under its water licence Snowy Hydro must prepare a safety management plan and is subject to a range of performance and operating rules designed to mitigate floods. Maintenance of airspace in the Snowy Hydro facility and Blowering Dam is a key safety measure to mitigate the risk of floods and to provide capacity for emergency power generation.
- Under the Blowering Airspace Deed State Water maintains an airspace volume of up to 190 gegalitres to accommodate water released by Snowy Hydro during emergency power generation. It also maintains airspace and manages water releases so as to mitigate the risk of floods downstream of Blowering Dam.

Access to the services subject to the declaration application may present risks. The Council needs to identify the possible threats to human health and safety posed by third party access and determine whether these concerns can be addressed, including through the terms and conditions on which access is provided.

The Council seeks comments on:

- *What is the nature of the health and safety regulatory regime within which:*
 - *Snowy Hydro provides energy generation and ancillary services and water collection, storage and transport services? To what extent would a party seeking access to the water storage and transport service be subject to such a regime?*
 - *State Water provides a water storage and transport service? To what extent would a party seeking access to its water storage and transport service be subject to such a regime?*
- *How much airspace in the Snowy Hydro storage facilities needs to be reserved to provide appropriate safety margins? Could access to the services of the storage and transport facilities be provided without adversely affecting safety?*

- *How much airspace in Blowering Dam needs to be reserved to provide appropriate safety margins? Could access to this water storage and transport service facility be provided without adversely affecting safety?*
- *Is there any reason why health and safety matters cannot be dealt with through appropriate terms and conditions of access to each of the services so as to satisfy criterion (d)?*

Criterion (e): The effective access regime test

Under criterion (e) infrastructure services already covered by an ‘effective access regime’ cannot be declared for access under part IIIA (box 1, p. iv). The main purpose of criterion (e) is to allow state or territory governments to develop industry-specific access regimes compliant with the Competition Principles Agreement that apply to the exclusion of part IIIA (see Appendix II).

The term ‘effective access regime’ is not defined in the TPA. Some guidance as to its meaning can be found in s. 44G(3) which provides that when considering whether an access regime established by a state or territory amounts to an effective access regime, the Council must apply the relevant principles in the Competition Principles Agreement.

In the Sydney Airport decision, the Tribunal determined that a State or Territory access regime that the Commonwealth Minister has decided is an effective access regime (under sections 44M and 44N of the TPA) meets criterion (e). In assessing the matter, the Council also has regard to:

- whether outcomes produced by the regime are efficient
- the legal enforceability of the regime by all interested parties
- whether the regime reflects the principles embodied in clause 6 of the Competition Principles Agreement

Lakes R Us submits that although water allocation systems are in place these do not constitute an effective access regime for the purposes of criterion (e).

There is no state access regime determined as effective under sections 44M and 44N of the TPA that cover the water storage and transport service provided by Snowy Hydro or State Water.

The Council will need to determine whether arrangements in place provide an effective access regime. The regulatory arrangements governing water ownership and rights to collect, store, take and use water, particularly those rules relating specifically to the Murrumbidgee and Murray river systems, are likely to be relevant to this criterion. The rules provide for legally

enforceable rights to access water on certain terms and conditions and govern many aspects of infrastructure service provision and pricing.

Regulations that may be relevant to this matter include the Murray–Darling Basin Agreement, the Water Management Act (NSW), *Water Act 1912* (NSW), Snowy Hydro Corporatisation Act, Snowy Water Licence, State Water Corporation Act, State Water Interim Operating Licence and the Blowering Airspace Deed. Water plans for the Murray and Murrumbidgee river systems are also relevant, such as the New South Wales water sharing plans for the Murrumbidgee and Murray–Lower Darling regulated river water sources. The water management and allocation system operating in Victoria under the *Water Act 1989* and in South Australia under the *Water Resources Act 1997* are also likely to be relevant in relation to the Murray River system. An overview of key features of the institutional arrangements relevant to the declaration application is provided in III.

In relation to the Blowering Dam facility there are three principal instruments that govern the powers and functions of State Water — the Interim Operating Licence, Water Management Works Approval under the Water Management Act and the relevant water sharing plans. Clause 3 of the Interim Operating Licence requires State Water to capture and store water and to release water to persons entitled to take the water. This must be achieved in a manner consistent with the requirements of the water sharing plan (the plan for Murrumbidgee regulated river water sources includes the water in Blowering Dam) in a manner that is efficient, effective, safe and financially responsible manner. IPART regulates State Water’s bulk water supply charges.

The Snowy Hydro Corporatisation Act and associated water licence (in place for a period of 75 years) confer on Snowy Hydro an exclusive right to collect, store and divert water in the Snowy catchment. The volume and timing of water released from the scheme is governed by environmental laws, NEM dispatch rules and the terms and conditions of the Snowy Water Licence. Because water rights are vested in the Crown Snowy Hydro considers that third parties have no entitlement to the water stored and transported in the scheme.

The Council seeks comments on:

- *To what extent (if any) does the regulatory regime, including the water allocation mechanisms, the licensing regime and the statutory instruments conferring rights and obligations on Snowy Hydro and State Water provide an enforceable right of access to:*
 - *the water storage and transport service of Snowy Hydro*
 - *the water storage and transport service of State Water*
 - *the water in the Snowy Scheme?*

Criterion (f): The public interest test

Criterion (f) requires the Council to test whether access (or increased access) to the service would not be contrary to the public interest (box 1, p. iv). The term ‘public interest’ is not defined in the TPA. It is a concept that is difficult to define precisely, in part, because community attitudes and opinions change and evolve over time. As a guide, however, the object of the TPA is to enhance the welfare of Australians.

The public interest criterion does not constitute an additional positive requirement which can be used to call into question the result obtained by the application of criteria (a) to (e). Criterion (f) accepts the results derived from the application of (a) to (e), but enquires whether there are any other matters that lead to the conclusion that declaration would be contrary to the public interest (Duke Eastern Gas Pipeline decision, para 145).

In considering the public interest the Council weighs the benefits from declaration against the costs to gauge the net impact on the economy as a whole. While no attempt to list public interest considerations can be exhaustive, matters which might be considered include the following open-ended list of items in clause 1(3) of the Competition Principles Agreement:

- ecologically sustainable development
- social welfare and equity considerations, including community service obligations
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers
- the competitiveness of Australian businesses
- the efficient allocation of resources.

Other relevant matters may include impending access regimes or arrangements, national developments and the desirability for consistency across access regimes, relevant historical matters and privacy.

A key public interest consideration is the net impact of declaration on economic efficiency. This encompasses a consideration of the regulatory costs of declaration, including administrative and compliance costs for businesses and the costs of ‘regulatory failure’. For example, declaration in inappropriate circumstances could undermine price signals, innovative activity or the

incentives for investment. This criterion involves a consideration of the impact on a range of markets as well as broader impacts.

Lakes R Us submits that access to the water storage and transport services of Snowy Hydro and State Water would be in the public interest because it would promote competition and provide efficiency, environmental and resource allocation improvements. Lakes R Us points to a range of potential benefits. The proposal could promote competition in the temporary water trading markets delivering more choice and provide incentives to improve service delivery and/or lower prices. Better utilisation of the storage capacity in the Snowy Scheme could result in cost savings to the water industry by reducing evaporation and the need for capital investment in temporary storage facilities further downstream in the Murray and Murrumbidgee river systems. In particular, Lakes R Us considers that improved access to secure high quality water storage would encourage irrigators to invest in water saving technologies. This could provide on-farm productivity improvements through improved average yield and by enabling farmers to better plan and manage their operations. By improving agricultural competitive on-farm productivity improvements could promote export growth and provide benefits to consumers through greater choice and/or price reductions.

Any water savings achieved through access to the water storage and transport services could be used for a number of beneficial alternative purposes. It could, for example, be used to:

- increase the supply of irrigation water during drought times
- enhance environmental water allocations or provide additional flexibility as to the timing of environmental water releases
- enhance the ability of hydroelectricity generators to respond to spikes in demand for electricity or for other emergency generating purposes.

Snowy Hydro points to a number of costs that would arise from third party access its water storage and transport service. Snowy Hydro states that third party access to the service would have a direct impact on the timing and amount of electricity sent out, spot prices and existing obligations under derivative contracts in NEM. This would reduce the efficiency and reliability of NEM services and have material economic consequences for Snowy Hydro and other participants in the NEM. Further altering the pattern of storage, water movement and releases in the Snowy Scheme and the Murray and Murrumbidgee river systems to cater to the demands of third parties may have adverse consequences for the natural environment. Increasing the chance of spills, for example, risks significant damage to the natural environment and may reduce the environmental effectiveness of the Murray–Darling Basin Cap where it reduced capacity to provide minimum environmental water flows.

In addition, third party access may affect current extractive water use rights and require governments to alter the existing water management and allocation systems because of the practical need to implement access via a

water ‘swap’. The swap would require changes to an individual’s water extraction and use rights and would potentially alter the rights to or share of water for all other users because, among other things, it would vitiate existing regulatory constraints on water trading and carryover. The Lakes R Us proposal, for example, would extend carryover to high security entitlement holders. Such extension would reduce the overall share of water available to other water users because unused high security water allocations form part of the water allocation for general security licence holders in the subsequent water year.

For these reasons the third party access proposal may require a raft of changes to the current regulatory arrangements including to the Murray–Darling Basin Agreement, the Snowy Corporatisation Act and State Water Corporation Act and related water licences and water allocation arrangements in New South Wales, Victoria and South Australia, particularly relevant water plans such as those covering the Murray–Lower Darling and Murrumbidgee regulated river water sources. In many cases, jurisdictional water management and allocation arrangements have been developed over a long period via extensive public consultation and involve measures to address stakeholder requirements.

The proposal also potentially impacts on the National Water Initiative and regulatory arrangements concerning electricity generation.

The Council seeks comments on:

- *Would competition in the water lending and trading market or any other dependent market resulting from third party access (not just the specific Lakes R Us business proposal) to water storage and transport services:*
 - *deliver beneficial efficiency, resource use and/or environmental outcomes? What are the likely benefits and how would those benefits arise?*
 - *impose efficiency costs or cause environmental damage? What are the likely costs and how would those costs arise?*
- *What amendments to the current regulatory regime would be needed if the water storage and transport services were declared and what would be the likely costs of such amendments?*
- *Whether there any other reasons why declaration of each of water storage and transport service may be contrary to the public interest?*

Duration of declaration

Section 44H(8) of the TPA requires that every declaration include an expiry date. This can be a specified future date and/or can involve an event which may occur in the future. The period of declaration will vary according to the circumstances of each application.

Decisions about the duration of access do not constrain future applications for declaration at the expiry of declaration. Expiry of declaration also does not constrain the parties from negotiating access rights that continue beyond the period of the declaration.

Lakes R Us seeks access to the excess water storage capacity of the Snowy Hydro facility for up to 30 years. The Council is considering this as a request by Lakes R Us for declaration of the water storage and transport services for a period of 30 years.

Declaration should apply for a sufficient period to be able to influence the pattern of competition in relevant upstream or downstream markets and have regard to the importance of long term certainty for businesses. This requires an assessment of relevant factors, such as the cyclical nature of hydrology, long lead times for investment in major infrastructure and any other developments affecting water and electricity markets, including environmental issues, such as climate change. Given the focus of the proposal on water supply in drought years some access seekers may require declaration for a specific minimum period as a precondition for raising finance for investment or before entering into long term contractual commitments.

Against these considerations must be balanced the potential for technological development, reform initiatives (such as changes in legislation governing access to the relevant service) and future market evolution. All these factors may have implications for the monopoly characteristics associated with a service or other industry. A change in relevant factors may mean that a service that meets the criteria for declaration today may not do so in the future. With regard to this a key consideration is the water sharing plans, which set the rules for the extraction of water. In New South Wales, for example, water sharing plans operate for 10 years.

The Council seeks comments on:

- *What is an appropriate duration for any declaration of the water storage and transport services and why?*

- *Should the duration for any declaration of the water storage and transport service of Snowy Hydro differ from the duration for any declaration of the water storage and transport service of State Water? If so, why?*
- *Are there any reasonably foreseeable issues that could materially affect the Council's assessment of the duration of any declaration in line with the Lakes R Us application? If so, when and how are the issues likely to arise?*

Appendix I: Sections 44F & 44G of part IIIA

Section 44F: Person may request recommendation

- 44F(1) [Written application to Council] The designated Minister, or any other person, may make a written application to the Council asking the Council to recommend under section 44G that a particular service be declared.
- 44F(2) [Council must act] After receiving the application, the Council:
- (a) must tell the provider of the service that the Council has received the application, unless the provider is the applicant; and
 - (b) must recommend to the designated Minister:
 - (i) that the service be declared; or
 - (ii) that the service not be declared.
- 44F(3) [Application not in good faith] If the applicant is a person other than the designated Minister, the Council may recommend that the service not be declared if the council thinks that the application was not made in good faith. This subsection does not limit the grounds on which the Council may decide to recommend that the service not be declared.
- 44F(4) [Consideration of alternative facilities] In deciding what recommendation to make, the Council must consider whether it would be economical for anyone to develop another facility that could provide part of the service. This subsection does not limit the grounds on which the Council may decide to recommend that the service be declared or not be declared.
- 44F(5) [Withdrawal of applications] The applicant may withdraw the application at any time before the Council makes a recommendation relating to it.

Section 44G: Limits on the Council recommending declaration of a service

- 44G(1) [Access undertakings] The Council cannot recommend declaration of a service that is the subject of an access undertaking in operation under section 44ZZA.
- 44G(2) [Council to be satisfied of matters] The Council cannot recommend that a service be declared unless it is satisfied of all of the following matters:
- (a) that access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service;

- (b) that it would be uneconomical for anyone to develop another facility to provide the service;
 - (c) that the facility is of national significance, having regard to:
 - (i) the size of the facility; or
 - (ii) the importance of the facility to constitutional trade or commerce; or
 - (iii) the importance of the facility to the national economy;
 - (d) that access to the service can be provided without undue risk to human health or safety;
 - (e) that access to the service is not already the subject of an effective access regime;
 - (f) that access (or increased access) to the service would not be contrary to the public interest.
- 44G(3) [Effective access regimes] In deciding whether an access regime established by a State or Territory that is a party to the Competition Principles Agreement is an effective access regime, the Council:
- (a) must apply the relevant principles set out in that agreement; and
 - (b) must not consider any other matters.
- 44G(4) [Council to follow Minister's decision] If there is in force a decision of the Commonwealth Minister under section 44N that a regime established by a State or Territory for access to the service is an effective access regime, the Council must follow that decision, unless the Council believes that, since the Commonwealth Minister's decision was published, there have been substantial modifications of the access regime or the relevant principles set out in the Competition Principles Agreement.

Appendix II: Competition Principles Agreement (extract)

- 6(2)** The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:
- (a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or
 - (b) substantial difficulties arise from the facility being situated in more than one jurisdiction.
- 6(3)** For a State or Territory access regime to conform to the principles set out in this clause, it should:
- (a) apply to services provided by means of significant infrastructure facilities where:
 - (i) it would not be economically feasible to duplicate the facility;
 - (ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and
 - (iii) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist; and
 - (b) incorporate the principles referred to in subclause (4).
- 6(4)** A State or Territory access regime should incorporate the following principles:
- (a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access.
 - (b) Where such agreement cannot be reached, governments should establish a right for persons to negotiate access to a service provided by means of a facility.
 - (c) Any right to negotiate access should provide for an enforcement process.
 - (d) Any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.

- (e) The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirements of persons seeking access.
- (f) Access to a service for persons seeking access need not be on exactly the same terms and conditions.
- (g) Where the owner and a person seeking access cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.
- (h) The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.
- (i) In deciding on the terms and conditions for access, the dispute resolution body should take into account:
 - (i) the owner's legitimate business interests and investment in the facility;
 - (ii) the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;
 - (iv) the interests of all persons holding contracts for use of the facility;
 - (v) firm and binding contractual obligations of the owner or other persons (or both) already using the facility;
 - (vi) the operational and technical requirements necessary for the safe and reliable operation of the facility;
 - (vii) the economically efficient operation of the facility; and
 - (viii) the benefit to the public from having competitive markets.
- (j) The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:
 - (i) such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;
 - (ii) the owner's legitimate business interests in the facility being protected; and
 - (iii) the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.

- (k) If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.
- (l) The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.
- (m) The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.
- (n) Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.
- (o) The dispute resolution body, or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.
- (p) Where more than one State or Territory regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other co-operative legislative scheme, provide for a single process for persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

Appendix III: Water management, sharing and use

This appendix provides an overview of water management and sharing arrangements pertinent to the declaration application. The material focuses on New South Wales water sharing and trading rules for the Murray and Murrumbidgee river systems. It also provides information on the Snowy Scheme including the role of key service providers (Snowy Hydro and State Water) and the water sharing arrangements under the Murray–Darling Basin Agreement.

Water management in New South Wales

The *Water Management Act 2000*,⁵ administered by DIPNR, controls rights to extract and use water, construct water works (dams and weirs) and undertake activities in or near water sources in New South Wales. The Act aims to provide a sustainable and integrated approach to managing the state's water resources over the long term. It establishes a framework for sharing and allocating water to the environment, landholders and indigenous people and licensed water users.

The Act provides for water access licences that are separated from land, divisible and can be transferred. A licence entitles the holder:

- to shares in the available water from a specified water source (the share component) and
- to take the water at specified times, rates or circumstances, and in specified areas or locations (the extraction component).

The category of the licence determines the priority of access to the available water. The main licence categories listed in order of priority are:

1. Local water utility access licences, and Domestic and stock licences — for town and essential domestic water use
2. Regulated river (high security) access licences — for industrial, mining and irrigation
3. Regulated river (conveyance), Regulated river (general security), Unregulated river or aquifer access licences — mostly for general irrigation
4. Supplementary water access licences — for access to surplus water that cannot be captured by a dam.

⁵ The Water Management Act largely superseded the *Water Act 1912*.

New South Wales amended the Water Management Act in 2004 to extend the duration of most access licences from a fixed period to a perpetual right to access the water.

New South Wales uses water sharing plans for managing water and setting the day-to-day rules for sharing and allocating water among competing demands — the environment, landholders and indigenous people and other water users. Where there is insufficient water available to provide a full allocation to licence holders, the plans must ensure allocations for higher priority licences are diminished at a lesser rate than the water allocations of the lower priority licence.

The water sharing plans for the Murrumbidgee regulated river water source and Murray and Lower Darling regulated rivers water sources are relevant to the Lakes R Us business proposal. The former plan covers the water between the banks of all rivers from the upper limit of Burrinjuck Dam water storage and Blowering Dam water storage downstream to the junction of the Murrumbidgee River and the Murray River. In relation to the Murray River, the latter plan covers the water between the banks of all rivers from the upper limit of Hume Dam water storage, down stream to the South Australian border

Water dealings

In response to concerns about the health of its waterways and to implement the Murray–Darling Basin Cap, New South Wales placed an embargo on the issue of new water access licences suitable for use in irrigation, industry and mining. Trading therefore is the main means by which new water users obtain water or existing water users expand their allocation.

The Water Management Act permits water dealings that involve the trading of water licences and allocations as well as changes to water licences. Water trading, which involves the buying and selling of a licence or the water allocations under the licence is the most common form of water dealing. There are three types of water trades recognised in New South Wales:

- transfers of licences: a change to the ownership of an access licence (ie sale of a licence)
- assignment of water allocations: movement of water allocations from the account of one access licence holder to another
- assignment of water entitlements: movement of the share component or extraction component from one access licence to another.

Water trades can occur on a temporary basis (for periods of no less than six months) or involve a permanent change of the water access rights under the licence. In irrigation schemes, the irrigation corporations hold bulk water

licences and only these entities can legally trade entitlements into or out of their districts.

Other water dealings include changing the location of a licence, splitting or consolidating licences and changing the category of a licence (from a general security to a high security licence on a regulated river, for example). Water dealing may also be of an administrative type, such as the registration of security interests, caveats and devolution aspects.

Water dealings in New South Wales must involve contracts between buyers and sellers and any changes to the licences must be registered on the Water Access Licence Register administered by the Department of Lands.

Water sharing plans determine the specific rules for water dealings. To help committees developing rules for access dealing New South Wales gazetted the Access Licence Dealing Principles Order 2004. The order aims to ensure fair dealing and maximise the social and economic benefits of access licences for the community consistent with the objectives of the Water Management Act. It seeks to provide greater flexibility to access licence holders that will:

- allow water to move from lower to higher value uses
- allow the establishment of water markets that value the access licences, thereby encouraging investment in water efficient infrastructure
- allow maximum flexibility in dealings.

The order establishes general rules that apply to each of the water dealings recognised in the Water Management Act. Dealing is not permitted when a licence is suspended or, for example, when it would involve the movement of water from an unregulated to a regulated water source. Water sharing plans are not permitted to restrict intrastate transfers of access licences (that is, the transfer of the licence from one person to another), or the subdivision or consolidation of access licences, but may impose other restrictions. The water sharing plan for the Murray regulated river water source does not permit dealing that would involve the movement of water from upstream to downstream of the Barmah Choke while the plan for the Murrumbidgee regulated river water source prohibits certain late season dealings, for example.

In addition, most New South Wales irrigation corporations and trusts restrict permanent water trades that move water out of an irrigation districts. Hassall and Associates (2002) report that Murray Irrigation Limited, for example, requires that permanent transfers out of its area must not exceed the sum of permanent transfers into the area. It reported that barriers to water trade out of irrigation districts were typically erected in response to fears of 'stranded assets' (Hassall and Associates 2002). The Murray–Darling Basin Commission is undertaking work to address this issue.

Carryover

The carryover of credits from one water accounting period to the next is permitted in New South Wales. It is not available in Victoria or South Australia. The primary purpose of carryover is to provide licence holders with an opportunity to choose to adjust their own supply reliability by forgoing water in the current year to boost supply reliability in future years. Carryover is usually available for general security water licences only because reliability of supply is less assured for this category of licence than for high security water licences.

Carryover provisions differ across water sharing plans and generally relate to the variability of the water system, the availability of the resource and storage capacity. The water sharing plans for the Murrumbidgee and the Murray and Lower Darling regulated rivers limit carryover to a maximum of 15 per cent and 50 per cent of annual entitlement, for example.

The Snowy Scheme

The Snowy Scheme, which is owned and operated by Snowy Hydro, was constructed as a dual hydroelectric and irrigation water supply scheme. It provides the main interconnecting link between the electricity transmission networks in New South Wales and Victoria and diverts over 2000 gigalitres of water each year to the Murray and Murrumbidgee river systems. Water diverted from the Snowy Scheme accounts for more than half of the surface water used annually in the Murrumbidgee river system and almost two-thirds of the surface water used annually in the Murray river system.

All costs associated with the operation of the scheme are borne by the electricity generation side of the scheme's operations (DITR 2000, p. 24). The Snowy Scheme has a generating capacity of 3736 megawatts (MW) and generates an average of 5129 gigawatt hours of energy a year. On average, the scheme operates at only around 15 per cent of capacity (ie the average annual inflows to the scheme can be released through the scheme's power stations operating at full capacity for 15 per cent of the time). The location of the scheme between Victoria, the ACT and New South Wales and its designed low capacity usage factor, in conjunction with substantial regulating storage, allows considerable flexibility in the timing of generation. It enables Snowy Hydro to offer a range of system security, quality of supply and risk management services to the national electricity market in addition to peak energy generation.

Snowy Hydro

The Snowy Corporatisation Act and Snowy Water Licence prescribe Snowy Hydro's rights and obligations with respect to the collection, diversion,

storage, use and release of water within the Snowy area. The Snowy Water Licence also imposes some obligations on Snowy Hydro in terms of releasing environmental flows into the Snowy River and the montane rivers within the Snowy area (Snowy Hydro Limited 2004, p. 4). In particular Snowy Hydro has:

- the right to collect, divert, store, use and release all water within the Snowy catchment to generate electricity
- to release all water collected and stored by it to rivers and streams flowing from the Snowy catchment except water subject to normal operating losses and consumption within the works
- discretion as to the release of water from the works, but each water year must release a minimum volume of water: 1062 gigalitres from the Snowy–Murray Development and 1026 gigalitres from the Snowy–Tumut Development. This is subject to variation, including in relation to the existing volume of water in the system
- no right to supply water to others or give rights to others to use water in the system (except as authorised by the Ministerial Corporation)
- to prioritise the generation of electricity so as to minimise the volume (if any) of Snowy notional spills
- must prepare a water management plan for each water year outlining how the Snowy Scheme will be operated.

Typically Snowy Hydro releases more than the minimum required each water year. This additional water is termed ‘above target water’.

The Snowy borrow

Snowy Hydro has been authorised by DIPNR (and the governments of Victoria and South Australia in cases where there is an impact on the water sharing arrangements under the Murray–Darling Basin Agreement) to supply water to downstream water users on a number of occasions in the past few years. The supply of water is known as the Snowy borrow and it allows irrigators holding general security licences to access ‘above target water’ from the Snowy Scheme as an advance on future water allocations. This advance is negotiated as needed between Snowy Hydro and irrigation interests such as Murray Irrigation, Murrumbidgee Irrigation and SunRice and is subject to borrow and payback provisions. Typically the water borrowed must be repaid from an irrigator’s water allocation in the following water year, but where water allocations are below a certain threshold, the payback of the water debt can be rolled over.

The Snowy borrow requires a temporary change to the Snowy Hydro Water Licence to provide for the reduction in the minimum water release requirements to accommodate the water payback. It also requires adjustment

under the Murray–Darling Basin Agreement to accommodate the impact on the water sharing arrangements for New South Wales and Victoria.

In addition to the Snowy borrow, irrigators have also been able to negotiate for access to intra-season advances from Snowy Hydro to accommodate more favourable timing for cropping.

State Water Corporation

The State Water Corporation provides the state’s bulk water delivery functions outside of the areas of operation of the Sydney Catchment Authority, Sydney Water Corporation, Hunter Water Corporation and other water supply authorities. State Water provides water to irrigation corporations, country town water supply authorities, farms, mines and electricity generators, by releasing flows from its dams and using natural streams as conduits. It owns and operates Blowering and Burrinjuck dams, which receive water released from the Snowy Scheme.

Section 6 of the State Water Corporatisation Act states that State Water’s principal functions are to:

- (a) to capture and store water and to release water
 - (i) to persons entitled to take the water, including release to regional towns
 - (ii) for the purposes of flood management
 - (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 the Act or any other Act or law.

State Water must charge fees for its services in accord with the Act and Interim Operating Licence. The licence requires that IPART determine the maximum prices that State Water can charge for bulk water services (clause 8.1 of the Interim Operating Licence). In determining maximum prices, IPART is required to consider a wide range of matters including financial viability, economic efficiency, consumer protection and environmental protection.

The Murray–Darling Basin Agreement

The Murray–Darling Basin Agreement between the Australian Government and the governments of New South Wales, Victoria, Queensland, South Australia and the ACT (The ACT participates through a memorandum of understanding) aims ‘to promote and co-ordinate effective planning and management for the equitable efficient and sustainable use of the water, land and other environmental resources of the Murray–Darling Basin’ (clause 1).

Part X of the agreement specifies the waters of Murray River that are under the control of the commission and sets out how the water is shared between South Australia, New South Wales and Victoria. South Australia receives a fixed monthly entitlement and the commission distributes water to the other states after meeting this entitlement. The agreement allows for water released from the Snowy Scheme to be shared equally between New South Wales and Victoria.

The agreement also specifies the role of the commission in operating water storages and sets out the water accounting rules (including diversions, losses, surplus conditions; water spills for flood control, dilution flows etc) including special rules for dealing with droughts. The agreement provides the commission with the power to give directions for the release of water from certain upper Murray River storages, including the Hume and Dartmouth dams, Lake Victoria and the Menindee Lakes Storage. The cost of managing and maintaining assets under the cross-jurisdictional arrangements, such as Hume Dam, is jointly met by the signatory states. In relation to Hume Dam, for example, New South Wales Treasury pays the New South Wales share of costs and allocates the costs to State Water.

Council publications related to declaration matters

The National Access Regime: A Guide to part IIIA of the Trade Practices Act 1974

Part A Overview

Part B Declaration

Part C Certification

Third party access in the water industry, a report prepared for the National Competition Council by Tasman Asia Pacific Pty Ltd

Water

Services Sydney application for declaration of Sydney sewerage network services

Airports

Services provided through Melbourne and Sydney International Airports: application for declaration

The Airside Service provided at Sydney Airport: application for declaration by Virgin Blue

Electricity

Western Power Corporation electrical transmission and distribution services: application for declaration

Rail

Rail line services provided by Queensland Rail: application for declaration from Carpentaria Transport

Hunter Railway Line Service: application for declaration from the New South Wales Minerals Council

Rail lines between Sydney and Broken Hill: application for declaration from Specialized Container Transport

Rail and freight support services in Western Australia: applications for declaration from Specialised Container Transport

Rail line service in Pilbara region, Western Australia: application for declaration from Robe River Iron

Wirrida to Tarcoola rail track service: application for declaration from AuIron Energy Limited

Freight Australia's Victorian rail network services: application for declaration from Freight Australia

Application by Fortescue Metals Group Ltd (FMG) for declaration of a service provided by the Mt Newman and Goldsworthy railway lines: submissions on "production process" issue

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- Whelan, P (Minister for Police) 1997, Snowy Hydro Corporatisation Bill 1997, second reading, *Hansard*, Legislative Council, 12 November.