

## **PRELIMINARY COMMENTS BY STATE WATER RE:**

### **TRADE PRACTICES ACT DECLARATION PART IIIA**

#### **1. EXECUTIVE SUMMARY**

1.1 State Water Corporation (“State Water”) provides a bulk water service in all the major regulated rivers of New South Wales in its area of operation.

It owns and operates all the dams, weirs and re-regulation structure on the major regulated rivers, pursuant to an operating licence issued by the Governor.

1.2 State Water is a State Owned Corporation and its two shareholders are the Treasurer of New South Wales and the Minister assisting the Treasurer.

1.3 Lakes R Us Pty Limited ACN 108 826 133 (“Lakes R Us”) has applied for a declaration to be made under Part IIIA of the *Trade Practices Act, 1974* (“TPA”) as regards certain works and services of Snowy Hydro Limited and as regards those of State Water.

1.4 If a declaration was made, it is assumed that Lakes R Us would purchase the declared services from Snowy Hydro Limited and State Water and resupply access to water to downstream irrigators in the regulated Murrumbidgee and Murray Rivers.

1.5 This preliminary submission is intended to indicate to the Council that the requirements of Sections 44B and G of the TPA cannot be satisfied.

1.6 In brief, State Water submits that a declaration would be contrary to the provisions of Section 44G as follows:

1.6.1 Promotion of Competition- Subsection (a) – The right to the control, use and flow of all water in rivers are the State’s water rights and are vested in the Crown pursuant to the provisions of Section 392 of the *Water Management Act, 2000*

Water users (irrigators, etc. downstream of Blowering Dam) only have rights to access water once it has been released from a storage operated by State Water.

There is a limited right to carry water over from one year to the next subject to certain rules set out in the relevant Water Sharing Plan. However, declaring the service in the Murrumbidgee River would not promote competition in another market, say the Murray River, for the right to carry over water in the Murray River System, is similarly constrained.

1.6.2. Risk to Safety- Subsection (d) – Granting access would create undue risk to safety. Airspace operation of Blowering Dam water storage must be undertaken in accordance with the provisions of the Blowering Airspace Deed. An airspace volume of up to 190 giga- litres (GL) is required to be maintained by State Water to allow Snowy Hydro Limited to generate emergency power when required.

Allocating the first 800GL of airspace to the applicant would impact on Snowy Hydro's capacity to generate emergency power.

Additionally, airspace is required to be maintained in order to assist in mitigating the impact of floods.

1.6.3. Effective access regime- Subsection (e) – There is already an effective access regime in place. The current extant regime allows for certain classifications of water to be carried out from year to year. The applicant seeks to effect an open ended one i.e. one which allows for water to be stored for any number of years without regard to any other water users' rights.

1.6.4. Contrary to public interest- Subsection (f) – The extant water sharing arrangements are the result of negotiated outcomes following hard fought and sometimes often acrimonious negotiations with various interest groups and stakeholders.

Any alteration to any part of the Water Sharing Plan to give effect to the declaration sought must unravel the complex fabric of the plans agreed to and in this regard would be contrary to the public interest.

Thus, the Council cannot be satisfied that the application satisfies the requirements of the TPA.

## **2. STATE WATER CORPORATION**

### **Background (General)**

2.1 State Water Corporation is a State Owned Corporation established under the provisions of the *State Water Corporation Act 2004* (NSW) (hereafter referred to as SWCA) and the *State Owned Corporations Act, 1989* (NSW).

2.2 State Water Corporation (hereafter referred to as SWC) commenced business on 1 July 2004 principally to undertake the functions set out in Section 6 of the SWCA.

The two shares issued are held by the Treasurer of NSW and the Minister Assisting the Treasurer.

2.3 SWC has been granted an interim Operating Licence pursuant to the provisions of Clause 12 of Schedule 4 of the SWCA.

A copy of the interim Operating Licence is attached as Attachment "A".

2.4 The exercise of functions by SWC is also subject to the provisions of certain other instruments imposed on, or required to be held by, SWC.

Those instruments are:

- Water Management Works Approvals granted under the Water Management Act 2000;
- relevant Water Sharing plans made by the Minister for Natural Resources;
- any memoranda of understanding required to be entered into pursuant to the provisions of the interim Operating Licence.

### **3. BACKGROUND (the objectives and functions of State Water Corporation)**

3.1 Section 5 of the SWCA sets out the following objectives of the SWC:

#### ***“Section 5 - Objectives of Corporation***

- (1) *The principal objectives of the Corporation are to capture, store and release water in an efficient, effective, safe and financially responsible manner.*
- (2) *The other objectives of the Corporation are as follows:*
  - (a) *to be a successful business and, to that end:*
    - (i) *to operate at least as efficiently as any comparable business; and*
    - (ii) *to maximise the net worth of the State’s investment in the Corporation,*
  - (b) *to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,*
  - (c) *where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in Section 6 (2) of the Protection of the Environment Administration Act 1991,*
  - (d) *to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.*
- (3) *The other objectives of the Corporation are of equal importance, but are not as important as the principal objectives of the Corporation.*
- (4) *Section 20E of the State Owned Corporations Act 1989 does not apply to the Corporation.*

3.2 SWC's principal functions are set out in Section 6 of the SWCA.

Section 6 provides as follows:

- “(1) The principal functions of the Corporation are as follows:*
- (a) *to capture and store water and to release water;*
    - (i) *to persons entitled to take the water, including release to regional towns;*
    - (ii) *for the purposes of flood management; and*
    - (iii) *for any other lawful purpose, including the release of environmental water.*
  - (b) *to construct, maintain and operate water management works; and*
  - (c) *any other functions conferred or imposed on it by the Operating Licence or by or under this or any other Act or law.*
- (2) The Corporation may:*
- (a) *provide facilities or services that are necessary, ancillary or incident to its principal functions; and*
  - (b) *conduct any business or activity (whether or not related to its principal functions) that it considers will further its objectives.*

- (3) *The exercise by the Corporation of any of its functions is subject to the Operating Licence and any applicable requirements under the Water Management Act 2000 or the Water Act 1912.*
- (4) *This section does not limit the functions of the Corporation apart from this section, but is subject to the provisions of the State Owned Corporations Act 1989, this Act and any other Act or law.”*

3.3 The carrying out by SWC of its functions is qualified by the terms of the Operating Licence granted to it. Refer to Attachment “A”.

Whilst the area covered by the Operating Licence is the whole of the State, State Water is not empowered to operate in those areas set out in section 15 (1) (a)-(d), nor in that part of the State in respect of which Snowy Hydro Limited conducts its water operations.

The provisions of Section 15 are set out hereunder:

**“Section 15 - Area covered by Operating Licence**

- (1) *The area of operations of the Corporation is the whole of the State, other than the following areas:*
  - (a) *The area of operations of Sydney Water Corporation within the meaning of the Sydney Water Act 1994;*
  - (b) *the area of operations of Sydney Catchment Authority within the meaning of the Sydney Water Catchment Management Act 1998;*
  - (c) *the area of operations of Hunter Water Corporation within the meaning of the Hunter Water Act 1991; and*
  - (d) *the area of operations of a water supply authority.*
- (2) *Despite subsection (1) (b) and (d), the area of operations of the Corporation includes the area of operations of the Corporation in its capacity as a water supply authority in relation to the Fish River Water Supply Scheme.*
- (3) *Despite subsection (1), the Operating Licence may authorise the Corporation to carry out any of its functions:*
  - (a) *outside the State; or*
  - (b) *in any of the areas referred to in subsection (1) (a)-(d) with the agreement of Sydney Water Corporation, Sydney Catchment Authority, Hunter Water Corporation or the water supply authority, respectively (the **relevant body**).*
- (4) *If, under subsection (3) (b), the Corporation is to carry out its functions in more than one of the areas referred to in subsection (1) (a)-(d), the Corporation is to obtain the agreement of each relevant body in relation to the exercise of those functions.*
- (5) *Nothing in this Act affects the area of operations of Sydney Water Corporation, Sydney Catchment Authority or Hunter Water Corporation.*
- (6) *In this section, a reference to the **area of operations** of a water supply authority means the area of operations prescribed for that water supply authority by regulations made under section 289 (1) of the Water Management Act 2000.”*

3.4 SWC is precluded from conducting operations in the area of operations of Snowy Hydro Limited by virtue of the provisions of Sections 22, 23 and 32 of the *Snowy Hydro Corporatisation Act, 1997*.

#### **4. THE INSTRUMENTS WHICH GOVERN SWC's EXERCISE OF POWERS AND FUNCTIONS**

4.1 There are three principal instruments which govern the exercise of powers and functions by SWC, namely:

- Interim Operating Licence
- Water Management Works Approval
- The relevant Water Sharing Plans

4.2 Section 6 (3) of the SWCA, which has been set out earlier, makes the exercise of any of SWC's functions subject to the Operating Licence.

4.3 The exercise of the principal functions of the SWC are as set out in Section 6 (1) are also constrained by the relevant Water Sharing plans made pursuant to Section 51 of the *Water Management Act, 2000*.

4.4 The exercise of powers and functions by SWC is constrained by the provisions of Section 9 (2) of the *Water Management Act, 2000*.

The provisions of that section are set out hereunder:

***“Section 9 - Act to be administered in accordance with water management principles and State Water Management Outcomes Plan***

*(1) It is the duty of all persons exercising functions under this Act:*

- (a) to take all reasonable steps to do so in accordance with, and so as to promote, the water management principles of this Act, and*
- (b) as between the principles for water sharing set out in section 5 (3), to give priority to those principles in order in which they are set out in that subsection.*

*(2) It is the duty of all persons involved in the administration of this Act to exercise their functions under this Act in a manner that gives effect to the State Water Management Outcomes Plan.”*

4.5 In short, SCW has little if any discretion to accede to the application for the declaration without the consent of the Governor and the Minister for Natural Resources, and as set out later, without amendments be made to Various Acts and Statutory Instruments.

**5. THE MAIN AREAS OF CONCERN FOR STATE WATER CORPORATION IF THE DECLARATION WAS MADE ARE AS FOLLOWS:**

**5.1 As regards State Water Corporation's Operating Licence**

The purpose of the Operating Licence is expressed at Clause 2.1.1 to be:

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

**5.2 Pursuant to the provisions of the *State Water Corporation Act 2004* and to the Interim Operations licence, in its area of operation, State Water is obliged to:**

- to capture, store and release water to;

- (i) persons entitled to take the water, including release to regional towns,
- (ii) for the purposes of flood management; and
- (iii) for any of the lawful purpose including the release of environmental water,

- to construct, maintain and operate water management works,

- any other functions conferred or imposed on it by the Operating Licence or under any other Act or law.

**5.3 State Water is obliged to operate its Water Management Works consistent with any licences or approvals granted by the Minister for Natural Resources and must only release water from these works consistent with any relevant Water Sharing plan.**

Note 1. Water Management Works has the same meaning as that set out in the dictionary in the *Water Management Act, 2000*.

Note 2. *State Water Corporation Act, 2000* deems all of the Water Management Works vested in State Water Corporation to be licensed or approved under the provisions of the *Water Act, 1912* or the *Water Management Act, 2000* pending the issue of formal licences and approvals.

Note 3. The relevant Water Sharing plans are the plans for:

- Murrumbidgee Regulated River Water Sources
- Murray and Lower Darling Regulated River Water Sources

**5.4 Other provisions of the Operating Licence require State Water to:**

- operate systems and services for delivering water in accordance with certain performance standards (vide Clause 5.1)

- develop and implement a total asset management strategy (vide Clause 5.2)

- endeavour to manage water, its water release functions and operations to ensure the timely availability of water taking into account physical supply constraints (vide Clause 6)
- conduct its operations in compliance with the requirements of the *Water Management Act, 2000*, the State Water Management Outcomes Plan and the Water Sharing Plans established under the Act (vide Clause 7)
- must develop a Customer Service Charter detailing the levels of service and mutual obligations of State Water and its customers (vide Clause 4.4)

5.5 In respect of all these matters, State Water has no discretion to perform its functions outside of parameters set without breaching the terms of the Operating Licence or the provisions of Section 16 of the *State Water Corporation Act, 2004*.

## **6. EXAMINING THE APPLICATION**

6.1 SWC has had some difficulties understanding what the applicant seeks for it makes certain assumptions which are at odds with the nature and extent of current water rights and the regulatory provisions which underpin those rights.

The application infers that irrigators and other stakeholders who have water access licences could, if the application was granted, make use of the storage service and have the stored water released at a time which suits their requirements subject only to environmental constraints.

### **6.2. As regards to the impacts on Customers of State Water and their rights and dealings granted and effected under the *Water Management Act, 2000***

6.2.1 The terms “Customers” for the purposes of these comments means access licence holders i.e. access licences granted under the *Water Management Act, 2000*.

The provisions of Chapter 3 of the *Water Management Act, 2000* grant a bundle of rights to holders of access licences.

6.2.2 A holder of these rights is then entitled to exercise or enjoy a range of other rights or dealings dependent upon the continued existence of the provisions of the *Water Management Act, 2000* and those deriving from the exercise of a power or function by the Minister for Natural Resources.

6.2.3 Part 2 of Chapter 3, particularly Section 56, describes what an access licence entitles its holder to. The provisions of Section 56 are set out as follows:

#### **“Access licences**

(1) *An access licence entitles its holder:*

- (a) *to specified shares in the available water within a specified water management area or from a specified water source (the **share component**),*
- (b) *to take water:*
  - (i) *at specified times, at specified rates or in specified circumstances, or in any combination of these, and*
  - (ii) *in specified areas or from specified locations, (the **extraction component**).*

- (2) *Without limiting subsection (1) (a), the share component of an access licence may be expressed:*
- (a) *as a specified maximum volume over a specified period, or*
  - (b) *as a specified proportion of the available water, or*
  - (c) *as a specified proportion of the storage capacity of a specified dam or other storage work and a specified proportion of the inflow to that dam or work.*
- (3) *Shares in available water may be assigned generally or to specified categories of access licence.*
- (4) *In the case of a local water utility licence, its share component is to be expressed as a specified volume per year.*
- (5),(6) *(Repealed)*
- Note:** *An access licence:*
- (a) *does not confer a right on any person to use water for any particular purpose (that right is conferred by a water use approval), and*
  - (b) *does not confer a right on any person to construct or use a water supply work (that right is conferred by a water supply work approval)."*

6.2.4 The fulfilment of, and the exercise of, the entitlements is dependant on the Minister for Natural Resources relevantly making a Water Sharing Plan in terms which satisfy the requirements of Section 50 of the *Water Management Act, 2000*.

The relevant Water Sharing Plan purports to:

- establish environmental water rules;
- identify the requirements for water of basic rights holders;
- the requirements for water extraction;
- establish access licence dealing rules; and
- the establishment of a bulk access regime.

6.2.5 The bulk access regime identifies not only the water potentially available for abstraction by access licence holders but also establishes the rules

- for granting such licences;
- for managing such licences when granted;
- for making available water determinations;
- establishing priority rules when water allocations have to be adjusted;
- identifying any mandatory conditions which must be imposed on access licences; and
- for adjusting/varying share and extraction components of access licences.

6.2.6 The rights of access licence holders are dependent upon the continued and lawful implementation of all of the relevant rules identified in the relevant Water Sharing plans.

6.2.7 The variation of any feature of or any component of an access licence will have an impact on not only other access rights holders collectively but on the individual rights. For example: a proposal to temporarily transfer a water allocations to the holder of another access licence assumes that the characteristics of the water managed by the rules is homogeneous i.e. all the characteristics of the rights are the same.



If separate rights to store water allocation different from the ones contained in a Water Sharing plan were granted, then a dealing could not be permitted for it would not be conformable with the requirements of or the rules of the Water Sharing Plan.

The creation of separate rights as regards storage/carry over, necessarily changes the characteristics of existing rights of access licence holders.

Similarly, transfers of access licence must be affected and new transfer rules will have to be established if that is possible. Currently the lakes and rivers of the Snowy Hydro area of operations are not a water source for the purposes of the Murray or Murrumbidgee Regulated Rivers Water Sharing Plans. Unless and until they become water sources, the management of water in them is outside of the ambit of the provisions of the Water Management Act same as to the requirement that Snowy Hydro holds a Water Management Works Licence.

- 6.2.8 The application also assumes that Blowering Dam may be operated and managed to provide the service proposed in a discrete way. In reality, the operation of Blowering Dam is inextricably connected with the operation of Burrinjuck Dam.

## **7. As regards to impact on system operations**

- 7.1 The operations of Blowering Dam cannot be considered in isolation from the operation of Burrinjuck Dam.

- 7.2 Appendix 1 of the Murrumbidgee Regulated River Water Sharing Plan lists the various rivers and lakes which comprise the water source managed pursuant to that plan.

- 7.3 At item 22, the water source is expressed to include “Murrumbidgee River from the upper limit of the storage of Burrinjuck Dam down stream to the Murray River”.

- 7.4 At item 27, the water source is expressed to include “Tumut River from the upper limit of the storage of Blowering Dam down stream to the Murrumbidgee River”.

- 7.5 Clause 14 of Part 3 of the plan establishes a set of environmental health water rules.

The rules not only require an end of system quantum of flow, but require flow requirements to be met at various points along the rivers course.

- 7.6 In order to meet these flow requirements, water is sourced from the following:

- Releases of water from Blowering Dam
- Release of water from Burrinjuck Dam
- Tributary inflows from streams below these storages

Those water sources are manipulated and managed in order to meet the environmental flow requirements imposed by the Water Sharing plan.

- 7.7 Fettering State Water’s ability to manipulate and manage the available water resources by creating new rights to store water so as to require the release of stored water at times inconsistent with the rules of the Water Sharing plan, will have the potential to harm the environment by affecting the quantum of the flows of water and the timing of flows of water down the river system.

- 7.8 Clause 46 establishes a set of supplementary environmental water rules. Supplementary water is that water which is available for abstraction at the times it is declared to be available as such.

It is the lowest ranked category of licence (refer Section 58 of the *Water Management Act. 2000*). However, for those access licence holders who have access to supplementary water, it is an extremely valuable property right.

Access to supplementary water is conditional upon the making of an available water determination which then must be consistently with the long term extraction limit specified in Clause 32(4)

For the purposes of determining the long term extraction limit, regard must be had to these matters set out in Clause 32 (1) of the Water Sharing plan.

- 7.9 One of those matters referred to in the plan is the cap on diversions referred to in Schedule F of the Murray Darling Basin Agreement.

In short, if the water usage in the Murrumbidgee Valley exceeds the cap on diversions, then water usage as to be reduced in order to meet the cap requirement.

If State Water's ability to manage one or both of the storages, the State of New South Wales' capacity to comply with cap requirements is detrimentally affected.

## **8. DOES THE APPLICATION MEET THE REQUIREMENTS OF SECTION 44G?**

- 8.1 **Firstly, dealing with the requirements of Section 44G (a).** As regards Blowering Dam, the applicant proposes that access licence holders could avail themselves of a service provided by the applicant by which those holders could store their water allocations granted in one year and call for the release of those water allocations in a subsequent or subsequent years.
- 8.1.1 As can be seen from paragraphs 6.2.3 to 6.2.5, access licence holders have entitlements to water which have been clearly defined by:
- the WMA
  - the Water Sharing Plan
  - the conditions attaching to the access licence itself
- 8.1.2 The point of differentiation between the service presently provided by SWC and the proposed by the applicant is predicated upon the storage of water beyond the year of allocation and the carry over provision set out in the plan.
- 8.1.3 That is, the applicant proposes a storage service for a number of years.
- 8.1.4 It is submitted that granting the applicant access to the airspace within Blowering Dam will not, and cannot expand the rights of access licence holders.
- 8.1.5 No extant rights of water users may be serviced by the granting of the application without amending the WMA, the relevant Water Sharing plan and the conditions attaching to access licences.
- 8.1.6 Assuming that an access licence holders rights could be expanded as set out above, access to the service must promote competition in at least one market place.
- 8.1.7 Since many of the water storages under SWC's control are constrained by flood operation or flood mitigation rules contained in Water Sharing plans in various ways, it is difficult to understand how competition could be promoted as the TPA requires.
- 8.2. **Secondly, dealing with Section 44G (d).** It is submitted that providing access to the airspace of Blowering Dam will have an undue risk on safety.

- 8.2.1 Airspace must be provided in Blowering Dam in accordance with the rules set out in the Water Sharing Plan.
- 8.2.2 Maintaining airspace assists in mitigating the impacts of floods downstream of the Dam. The height of the water level in the Dam is maintained at a level that is sufficient for the storage to fill based on the minimum forecast recession inflows.
- 8.2.3 As well, airspace operation is undertaken in accordance with the Blowering Airspace Deed. This Deed requires an airspace of up to 190 giga-litres for the purpose of emergency power generation.
- 8.2.4 Granting the applicant access to the airspace in Blowering Dam could have a serious impact on the capability of mitigating the downstream effects of flooding and could impact on Snowy Hydro's ability to generate power in emergency circumstances.
- 8.3 **Thirdly, dealing with Section 44G (e).** It has been determined that Water Sharing plans will provide for the sharing of water on an annual basis. That is, available water determinations will be made on an annual basis and allocations of water made available to holders of access licence could be used or traded during that year.
- 8.3.1 Unused water could be held in storage, subject to certain limitations, for use or trading in the subsequent year.
- 8.3.2 The Water Sharing rules, including the carry over rules, were negotiated over a long period of time and are the result of various compromises made by all of the various stakeholders.
- 8.3.3 The present access regime provided for in the Water Sharing plan gives effect to a balance struck between the competing claims for the available water. The rules relating to the carrying over of water were agreed to by the peak stakeholder bodies representing the majority of irrigators and thus it is submitted that it is an effective regime.
- 8.4 **Fourthly, as regards Section 44G (f).**
- 8.4.1 The relevant Water Sharing plans are the product of an exhaustive and extensive consultative and collaborative process which engaged the various parts of the community. The access regime established by the provisions of the *Water Management Act, 2000* followed a very lengthy developmental process. The process commenced in 1998 with the publication of a white paper setting out a proposal to effect reforms to the Water Sharing regime in NSW.
- 8.4.2 A large number of public meetings were held around the State not only explaining the proposed reforms but also to receive feedback.
- 8.4.3 That consultative process resulted in the drafting of an exposure draft of a water management reform bill.
- 8.4.4 That bill was circulated on another round of consultation with stakeholders and the community was undertaken.
- 8.4.5 The draft was amended to allow stakeholders and community concerns and to adopt changes agreed to. The bill when detailed in Parliament has the distinction of being the longest detailed bill in the history of the Parliament.
- 8.4.6 Substantial amendments were made to the bill in Committee to address the concerns of Members and of stakeholders. The provisions of the *Water Management Act* and the Water

Sharing rules and regimes which the vast majority of stakeholders and communities were satisfied with.

- 8.4.7 To upset the current Water Sharing arrangements would be against the public interest and would require the reflection of an access regime only recently and almost universally agreed to.

## **9. SOME ADDITIONAL SUBMISSIONS ON THE RATIONALE FOR ACCESS.**

### **9.1. Exploitation of market power**

- 9.1.1 State Water asserts that it is not in a position to exploit its position of a natural monopoly. It has been assumed that the applicant seeks to have access to Blowering Dam storage in order to pass water through that storage and through the Dam outlet works. It is assumed that the service to be provided is a service of storage and whilst the application does not state as much, it will be necessary for the storage service to affect the Blowering Storage as well.
- 9.1.2 In this regard, and upon that assumption, Blowering Storage will have to be operated to accommodate releases of water made by Snowy Hydro as well as releases by the applicant. In other words, State Water will be required to give up storage capacity of its own storages in order to accommodate the service proposed to be provided by the applicant.
- 9.1.3 It is asserted that under that assumption, access could not be granted on reasonable terms and conditions.
- 9.1.4 In any event, the terms and conditions of current water entitlement holders are established by legislation and or by statutory instruments, State Water has no option but to comply with the provisions of the *Water Management Act*, the Murray Darling Basin Agreement and the relevant Water Sharing Plans.
- 9.1.5 If there is a bottleneck it is not an infrastructure bottleneck but rather a legislative or statutory one.
- 9.1.6 As well, the Water Sharing arrangements particularly in the Murrumbidgee/Tumut Rivers system are predicated on the existence of and continued existence of statutory provisions and instruments arising from those provisions.
- 9.1.7 It is those provisions which define the rights of water users and it is those provisions which regulate and control how State Water conducts its water delivery business.
- 9.1.8 There cannot be any suggestion that State Water is vertically integrated with upstream and downstream business interests.
- 9.1.9 State Water's relationships with these interests are not voluntary nor are they contractual in nature. Obligations and duties are imposed on State Water.
- 9.1.10 In any event, the price which State Water charges for its water delivery services is determined by IPART. State Water seeks to influence the level of pricing by making submissions and representations to IPART but it does not set its own prices and charges for the services it provides.

## **10. EFFECTS OF ACCESS REGULATION**

- 10.1.1 Since it is not known whether the application proposes that new rights be established or that additional features or characteristics be grafted onto existing rights, it is difficult to estimate the cost to State Water which will ensue if the application were granted.
- 10.1.2 Clearly if new rights are created, these will have to be granted and managed by the Minister for Natural Resources. That regime would entail:
- the amendment of existing legislation;
  - the amendment of relevant Water Sharing plans;
  - the amendment of the Murray Darling Basin Agreement.
- 10.1.3 There would be an unquantifiable cost to State Water as well in that a system would have to be developed which could track which water users' water was passing through say Blowering dam at any time.
- 10.1.4 The matter of who exercises compliance powers also arises in that it is assumed that the relevant operator will ensure that its customers comply with the conditions attaching to that customer's water access rights. That scenario raises the issue of whether a commercial operator should have access to the regulatory powers of the regulator.

## **11. PROMOTION OF NET ECONOMIC BENEFIT**

- 11.1 As has already been written, State Water does not seek to prevent third parties from accessing its infrastructure nor can it encourage access to any of its infrastructure.
- 11.2 It is prevented from doing so by the terms of the various instruments which regulate it in the discharge of its functions.
- 11.3 The applicant seeks to provide a water storage service in respect of rights to water which it does not own i.e. it seeks to store water allocations on behalf of customers. However, in order to be able to provide that service, at least two matters need to be addressed.
- 11.4 The first is that the applicant will need to be granted an operating licence in order to undertake water storage functions.
- 11.5 The second is that the relevant Water Sharing Plans will have to be amended in order to create larger rights for access licence holders and to include the waters of the Snowy Scheme as water sources for the purposes of those plans.
- 11.6 Legislative amendments will be required in order achieve both matters.
- 11.7 However the application ignores the present Water Sharing arrangements and the impacts the proposal will have on water users who do not seek to use the services of the applicant.
- 11.8 One significant difficulty which presents itself is how to sensibly amend a Water Sharing Plan to accommodate the expanded storage rights of the applicants' customers and the unexpanded rights of those water users who do not join in the applicants' proposal.
- 11.9 *Water Management Act* creates a hierarchy of rights to water pursuant to the provisions of Section 58.

- 11.10 Local water utilities, major water utilities and domestic and stock licence holders have priority over all other categories of licences. Storages are operated in such a way to ensure that 100% of share components can be maintained through a repeat of the worst period of low inflows to the water source.
- 11.11 Sufficient volumes of water must be set aside from assured flows into the water source and in reserves held in Burrinjuck Dam, Blowering Dam or other water storages to meet those requirements.
- 11.12 In the case of high security access licences, 95% of share components are maintained in storages through a repeat of the worse renewal of low inflows.
- 11.13 Water is not to be made available to any lower ranking access licences unless and until the water requirements of higher ranked access licences have been met. When inflows less than provided for in the Water Sharing Plan occurs, the Minister may impose water restrictions and suspend the operation of a Water Sharing Plan [Refer Section 323 of the *Water Management Act, 2000*]

## **12. SUMMARY**

In State Water Corporation's view, the granting of the access rights sought is dependant upon amendments being enacted to various statutes, amendments being effected to various statutory instruments or agreements vesting on statutory enactments existing individual entitlements to water being adjusted.