Consultation paper:

Creating a dynamic and competitive metropolitan water industry

A water plan from the
NSW GOVERNMENT

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ISBN: 0 7313 32628
May 2006

Paper stock: Mega Matte 50% Recycled

Executive Summary

The *2006 Metropolitan Water Plan* is the NSW Government's comprehensive plan to secure sustainable water supplies for the community, the environment and the economy.

It identifies new measures to harness the resources of the private sector and to introduce the forces of competition to the metropolitan water industry.

On 29 November 2005, the Premier, Morris Iemma, announced that new rules would be developed to facilitate competition in the water and wastewater industries to encourage new and innovative recycling projects and dynamic efficiency in the provision of water and wastewater services.

These new rules include a licensing framework for private sector provision of reticulated drinking water, recycled water and wastewater services to protect public health and consumers and also the introduction of a regime to facilitate the negotiation and arbitration of access arrangements to water service infrastructure. The licensing framework and the access regime are the subject of this consultation paper.

The overarching objective of these reforms is to promote competition in the water and wastewater industries, and thereby to encourage new investment and innovation in the metropolitan water industry, in particular in the recycling of water.

Often drinking water is used where water of that quality is not required, such as for toilet flushing and garden watering. Demand for high quality drinking water can be significantly reduced by replacing it with recycled water, where appropriate for non-drinking purposes. As well as reducing demand for drinking water, recycling reduces stress on urban streams and rivers by capturing some of the water, and nutrients, that would otherwise be discharged from sewage treatment plants and stormwater drains.

The NSW Government is adopting a prudent, adaptive approach to reform, to ensure that the introduction of greater competition is consistent with broader community objectives.

The Government's pre-eminent priorities for the metropolitan water industry are the protection of public health, the environment and consumers. The proposed reforms reflect the Government's resolute commitment that these objectives will not be compromised. For example, it will be enshrined in the new rules that:

- both public and private suppliers, as a minimum, comply with water quality guidelines and meet environmental obligations
- consumers retain the opportunity to purchase essential water and wastewater services at postage stamp prices, and
- water supply and services are guaranteed through clearly identified and allocated obligations of the 'supplier of last resort'.

New South Wales is leading Australia in the introduction of competition to the metropolitan water industry. It is important to ensure that the reforms being introduced are adaptive, so that progress can be monitored and further reforms introduced, where necessary, to ensure that the objectives of a sustainable water supply and protection of public health, the environment, and consumers continue to be met.

Adaptive management involves establishing basic principles for the institutional framework and decision-making processes, using those principles to guide short term decision-making and undertaking periodic reviews guided by those principles.

A number of adaptive areas of the regime are flagged from the outset, including:

- the potential for the future extension of the geographic scope of both the licensing regime and the access regimes beyond the greater Sydney and Hunter regions, and
- future review of the regime with a view to moving toward a single licensing regime for both private and public suppliers.

Purpose of the consultation document

Written comments are invited from stakeholders on the draft licensing and draft access frameworks. Following consultation, legislation to enact these reforms will be brought to the Parliament later this year.

Submissions should be provided in writing by 2 June 2006 and be addressed to:
Metropolitan Water Directorate
The Cabinet Office
1 Farrer Place, Sydney 2000
or faxed to 9228 6522.

Copies of submissions will be made available at www.waterforlife.nsw.gov.au

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Glossary of terms

Dynamic efficiency is evident where the market is supplied with better quality goods and enhanced services through innovation.

Hunter Water means Hunter Water Corporation.

Incumbent water suppliers are prescribed water supply authorities under the *Water Management Act 2000* authorised to carry out activities in the relevant geographic area. Based on the initial geographic coverage of these reforms, the incumbent water suppliers will be limited to Sydney Water and Hunter Water.

Postage stamp pricing refers to a uniform periodic charge for a supplier's area of operations. This means that all customers within each customer class are charged the same price for a service, even though there are variations in the cost of service delivery across the supply network of that area of operations.

Recycled water is created where wastewater (eg. stormwater or sewage) is treated then supplied to farms, parks, golf courses, businesses and homes for their use. It can be used for a large number of purposes including toilet flushing, irrigation, clothes washing and numerous industrial processes.

Sewer mining is the extraction of sewage from a point in the sewerage network for treatment and recycling.

Supplier of last resort arrangements are the means to ensure that customers continue to receive water and/or wastewater services if a retailer in the competitive water and/or wastewater market is unable to supply water and/or wastewater services for some unforeseen reason.

Sydney Water means Sydney Water Corporation.

Competitive markets in the metropolitan water industry

Metropolitan Water Plan

The NSW Government's *Metropolitan Water Plan* encourages the private sector to implement innovative solutions to the water supply and demand balance, particularly with regard to recycling.

It proposes a comprehensive package of reforms to facilitate recycling by the private sector. As well as a new framework for licensing private sector reticulated service providers and a framework for the negotiation of access to significant water and wastewater infrastructure, the reform package includes:

- simplification of the process to obtain the raw materials necessary for water recycling through new streamlined sewer mining application procedures
- easier and faster environmental planning and approval requirements for small recycled water plants that discharge to sewerage systems, and
- guidance to local councils and developers to assist in the approval and operation of decentralised (or non-reticulated) recycled water plants and systems.

The current role of the private sector in the metropolitan water industry

Since 1995, the private sector's contribution to the delivery of water services in Sydney has been growing. A range of opportunities for private sector participation already exists and will continue. At present, many of Sydney Water's services to the community are provided by or in conjunction with the private sector through alliance contracts, build-own-operate and outsourcing arrangements.

Private sector involvement in the delivery of Sydney Water's Priority Sewerage Program

Metropolitan Water Plan achievements to create a dynamic and competitive industry

- The Independent Pricing and Regulatory Tribunal (IPART) has completed a major investigation into water and wastewater service provision in the greater Sydney region. The investigation considered a range of options for water and wastewater market structure to encourage increased competition and private sector participation.
- The first round of the Water Savings Fund allocated $9.2 million to the private sector to undertake water savings and recycling projects.
- The Government has called for registrations of interest from private companies to provide new recycled water services in the Camellia area to identify the most imaginative, cost-effective and sustainable option available.
- Bringing together Government and industry to achieve a secure water supply, hundreds of people in the private sector are employed to deliver the *Metropolitan Water Plan*. Private plumbers are working on behalf of Sydney Water to retrofit 550,000 homes with new water efficient components, such as showers. Scientists are developing new environmental flow regimes, builders are constructing new BASIX-compliant homes and engineers are modifying Warragamba Dam to access previously inaccessible water.

IPART inquiry into water industry reform

In 2005, the NSW Government commissioned the Independent Pricing and Regulatory Tribunal (IPART) to undertake an investigation into possible pricing principles and alternative arrangements for the delivery of water and wastewater services in the greater Sydney metropolitan area, including possible private sector involvement.

IPART released its Final Report on the *Investigation into Water and Wastewater Service Provision in the Greater Sydney Region* in November 2005. The Report's recommendations, which the Government has endorsed, include:

i. development of a State-based access regime for services provided by means of significant water and wastewater infrastructure

ii. review of the legal framework to ensure appropriate obligations are placed on both incumbents and new entrants and that barriers to competition and private sector involvement in the water industry are addressed

iii. development of a streamlined regulatory framework for sewer mining, including establishing a formal dispute resolution process

iv. continued IPART price regulation of services to small customers and that the prices of services for large customers continue to be regulated, but be reviewed if an access framework is established

v. increased use of competitive sourcing by water authorities in the Greater Sydney area to procure additional water supplies, and

vi. implementation of reforms through an adaptive management approach

The Government has moved quickly to endorse and is now implementing these reforms. This consultation document seeks comments on the proposed response to recommendations i) to iv).

New suppliers: New licences

Background

The private sector currently faces a number of economic and regulatory obstacles that have effectively barred entry to the markets for the provision of drinking water, recycled water and wastewater services. The NSW Government is removing these unwarranted barriers to competition. As these barriers to entry are addressed and as the private sector prepares to offer new services, a new regulatory regime is required to protect public health, the environment and consumers, and to create certainty for investors.

The proposed new regulatory arrangements:

- maintain and clarify existing requirements under the *Public Health Act 1991* to ensure that the powers of NSW Health with respect to the safety of drinking water apply to all new private sector service providers
- require new suppliers of water, recycled water and wastewater services to hold a licence issued by the Minister for Water Utilities (subject to limited exemptions). These licences will impose conditions relating to public health, environmental, consumer protection and other obligations, and
- maintain existing controls on incumbent water supply authorities, until a future review with a view to migrating incumbents into the new regime.

Protecting public health

Ensuring the continued protection of public health is a fundamental pre-condition of the proposed reforms.

Existing public health and environmental requirements (including any applicable development approvals and environmental licences) will be maintained, and will apply equally to incumbents and new suppliers.

It is proposed that new offences be included in the *Public Health Act 1991* prohibiting the supply of water which is a risk to public health and the supply of non-drinking water in circumstances where it could reasonably be mistaken for drinking water.

In addition, NSW Health will be consulted in the development of licence conditions to ensure that any additional public health controls appropriate for the proposed activities are included.

Protecting consumers

The Government is committed to ensuring the continued protection of consumers and will put in place measures to ensure that consumers' interests will not be compromised by these reforms.

New licences will contain specific obligations to comply with requirements related to consumer rights, complaints, switching and standard contracts.

All consumers will retain the opportunity to purchase essential water and wastewater services at postage stamp regulated prices from the incumbents (i.e. Sydney Water and Hunter Water) in order to provide a safety net for all consumers. In addition, the continued provision of essential water and wastewater services to all members of the community will be guaranteed through clearly identified and allocated obligations of the 'supplier of last resort'.

The current community service obligations (eg. to provide concessions to pensioners and others in economic need) and customer service requirements (including the terms of the customer contract) will be reviewed and clarified to ensure consumers continue to be protected as a dynamic, competitive metropolitan water industry is created.

Why have a licensing regime?

A licensing regime (rather than other options for regulating the industry, such as rules based regulation, certification, or industry self-regulation) has been selected as the appropriate instrument to regulate new entrants. Licensing has an adaptive capacity to respond flexibly to future offerings by the private sector, competition outcomes, public expectations and scientific knowledge. In addition, licensing enables:

- the Government and the public to be made aware of all new proposals, and to monitor how the market is evolving
- the Minister for Water Utilities to ensure that persons who are not fit to hold a licence do not operate in the market
- the Minister for Water Utilities, with advice from IPART, to develop licence conditions which are appropriately adapted to the market as it develops, and to particular business proposals, and
- the Minister for Water Utilities and IPART to adopt an effective, pro-active and flexible approach to the enforcement of obligations, including through periodic licence auditing.

These functions are particularly important given the current absence of regulatory experience of competition in water and wastewater in Australia. Similar licensing regimes have been adopted for the gas and electricity industries, and have also been applied to the UK drinking water industry.

Who will need a licence?

New suppliers of drinking water, recycled water and wastewater services by means of a reticulated network will be regulated through the new framework. Existing government suppliers will not be required to hold a licence under the new regime, but instead will continue to be regulated and licensed under existing legislation.

The new framework will be implemented progressively. Licences will be initially available in the greater Sydney and Hunter regions only.

Supply of water and wastewater services via a reticulated network without a licence will be an offence.

Licences will be required for entities wishing to:

- supply drinking water by means of a reticulated network
- supply wastewater treatment and collection services by means of a reticulated network, and
- supply recycled water by means of a reticulated network, except where that network exclusively supplies recycled water to large consumers for industrial use only.

The proposed licensing framework will not apply to non-reticulated systems. As such, single dwelling domestic wastewater recyclers, bottled water suppliers and the operators of small, decentralised systems will not be licensed. Decentralised (or non-reticulated) recycling plants and systems will be regulated through new guidelines currently open to public consultation, coordinated by the Department of Energy, Utilities and Sustainability. See www.deus.nsw.gov.au

Dual reticulated recycled water

What will a licence contain?

Licences will contain two types of conditions:

- legislative conditions, such as requirements to comply with applicable health and environmental legislation, and
- conditions that are specific to the new entrant's proposal.

Licences will include obligations with regard to:

- public health
- environmental protection
- consumer protection, and
- governance and reporting.

It is expected that, initially, licence conditions will largely be determined on a case-by-case basis but that, over time, increasingly standard conditions will be developed.

Licences will be enforceable via monetary penalties, rectification directions or the suspension or cancellation of the licence.

Breach of a licence condition will also constitute an offence, and failure to comply may, in appropriate circumstances, result in a fine or imprisonment.

Licence term

The draft framework nominates a maximum licence term of 15 years, without a right of automatic renewal.

This nominated licence term seeks to achieve an appropriate balance between minimising regulatory risk to encourage investment and ensuring that licences are appropriately adapted to changing circumstances and include effective incentives for continued compliance.

Future migration of incumbents

Consistent with the principle of adaptive management, the regime will be reviewed with a view to bringing incumbents (such as Sydney Water and Hunter Water) into the new licensing regime as competition develops.

Pricing regulation

Generally, price regulation is appropriate where it is necessary to protect consumers from potential abuse of monopoly power. For this reason, it is proposed that new entrants supplying services in competition with other suppliers will not be subject to price regulation. They will be able to compete by offering lower prices, or new services, or both.

However, existing price regulation of incumbent suppliers will continue. This approach recognises that incumbent suppliers will continue to possess significant market power in the provision of essential water and wastewater services, at least into the near future. The continued price regulation of monopoly service providers will provide a safety net for consumers.

Postage stamp pricing will be retained. It is the Government's view that all consumers within the region serviced by existing water supply authorities should, on grounds of social equity, continue to be able to obtain essential water and wastewater services at a 'postage stamp' price.

New licensed suppliers will also be subject to price regulation if they are a monopoly service provider. Amendments are proposed to the *Independent Pricing and Regulatory Tribunal Act 1992* to extend the legal basis for price regulation to non-government owned monopoly services.

Demand management obligations of new suppliers

Any private company proposing to utilise groundwater, rivers or dams to supply their customers will be required to contribute to overall water savings objectives. It is proposed that the existing obligations on Sydney Water to pay monies towards the Water Savings Fund for demand management initiatives would be extended to new suppliers.

Supplier of last resort and community obligations

In order to guarantee supply of essential services, new arrangements propose to allocate supplier of last resort responsibilities to the incumbents, given their universal coverage. The *Sydney Water Act 1994* and the *Hunter Water Act 1991* and both organisations' operating licences will be reviewed to clarify:

- Sydney Water's and Hunter Water's obligation to supply
- their role as supplier of last resort of essential water and wastewater services
- facilitation of cost recovery of that infrastructure required to fulfil supplier of last resort obligations, and
- the incumbent's public policy, community service obligations (eg. to provide concessions to pensioners and others in economic need) and customer service requirements (including the terms of the customer contract).

For more detail about the proposed reforms see Attachment 1: Draft Framework for consultation: Licensing of drinking water, recycled water and wastewater service provision at page 10.

A framework for negotiating and arbitrating access

The water and wastewater industry is characterised by large scale essential infrastructure such as trunk mains, sewerage pipes, and reticulation networks. The difficulties inherent in duplicating such infrastructure can present a significant barrier for new market entrants.

The NSW Government will encourage the development of innovative new services through the establishment of an access regime which facilitates the efficient use of existing infrastructure.

By gaining access to the spare capacity of existing infrastructure, new service providers will be able to avoid the inefficient and unnecessary duplication of the existing infrastructure.

Negotiation and arbitration

The access regime will provide an enforceable right for entities wishing to supply drinking water, recycled water and wastewater services to negotiate 'in good faith' with the owners of existing significant infrastructure to use a service provided by that infrastructure (such as the transportation service provided by Sydney Water's wastewater network).

The access regime will provide for IPART to arbitrate disputes, including determining appropriate terms, conditions and prices for access to the services, should those commercial negotiations fail.

It is important to note that the access regime will not provide a right to obtain a resource (such as wastewater for recycling). To assist recycled water suppliers to obtain the raw resource needed for their production processes, new streamlined sewer mining procedures have been developed. See www.sydneywater.com.au

The access regime will also not provide a right to use a production process facility (such as a treatment plant).

Coverage and declaration

The access regime will initially only apply to water and wastewater infrastructure in the greater Sydney and Hunter regions, with its geographic scope to be subject to future review. The regime will apply consistently to public and privately owned infrastructure.

The services provided by infrastructure will only become covered by the regime if the Minister, with advice from IPART, 'declares' the service as meeting the prescribed 'declaration criteria'. This process is outlined in the diagram on page 9.

The 'declaration criteria' are, briefly:

(a) the facility is significant
(b) it would not be economically feasible to duplicate the facility
(c) access is necessary to promote a material increase in competition in a downstream or upstream market
(d) access can be provided safely, and
(e) access is otherwise not contrary to the public interest.

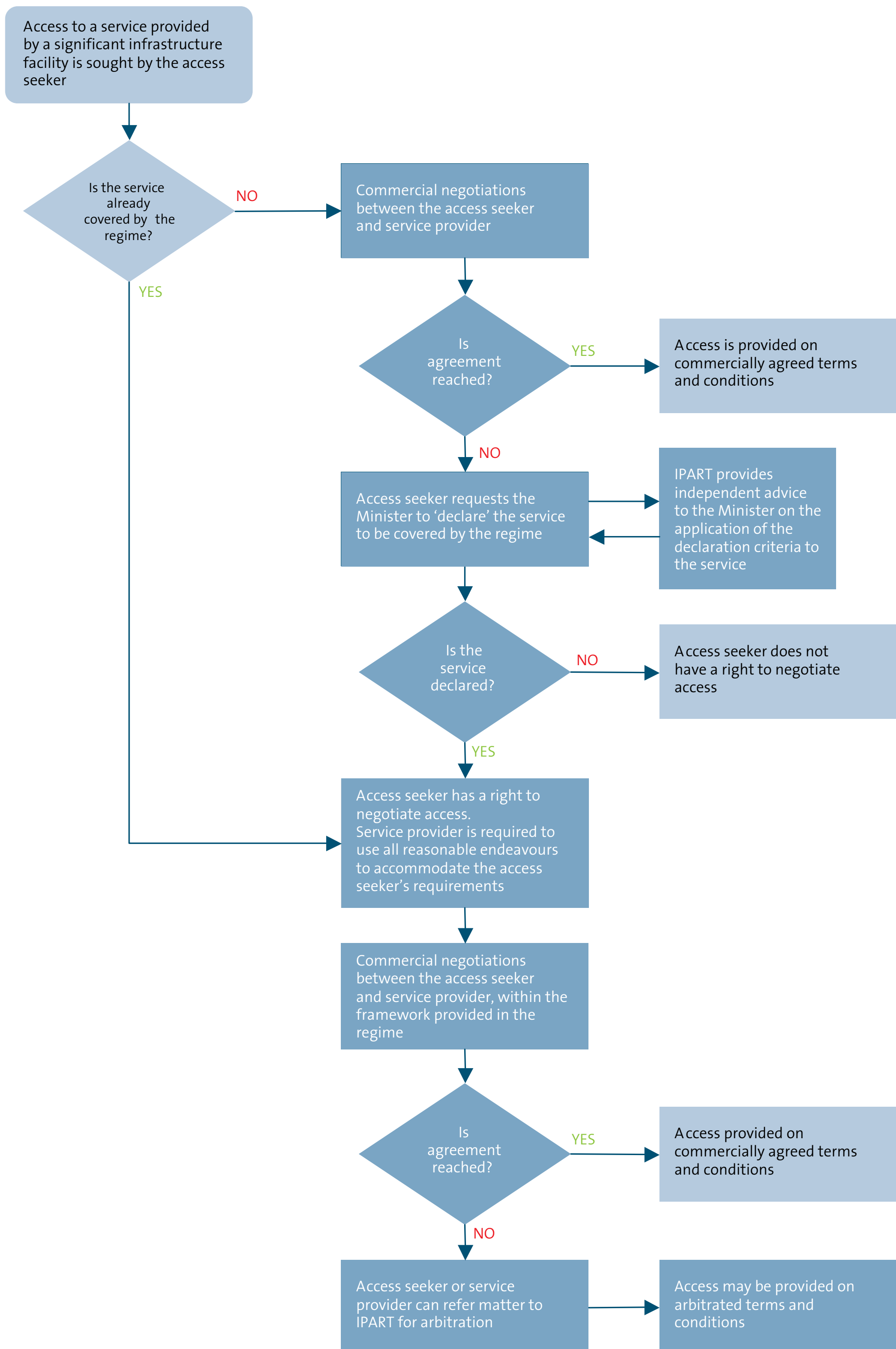
It is anticipated that many of the government-owned assets that meet the declaration criteria will be 'declared' from the outset.

Certainty for investors

To provide increased certainty to new infrastructure investors, services can be protected from declaration where:

- the services are being provided following a government-sponsored competitive tender which includes reasonable access terms
- the owner (or prospective owner) obtains a 'binding no-coverage ruling' (i.e. where the Minister, on advice from IPART, certifies that the declaration criteria are not met), or
- the service provider has in place a voluntary access undertaking which has been approved by IPART.

Seeking access to services under the proposed access regime



For more detail about the proposed reforms see Attachment 2: Draft Framework for consultation: Water and wastewater access regime at page 18

Draft framework for consultation: Licensing of drinking water, recycled water and wastewater service provision

Simplified outline

Stringent public health and environmental regulations will apply equally to public and private suppliers

- Existing health and environmental requirements (including any applicable development approvals and environmental licences) will be maintained. Where they would not otherwise apply to new competitive suppliers, they will be extended so that they apply equally to incumbents and new entrants.

- New offences will be included in the *Public Health Act 1991* prohibiting the supply of water which is a risk to public health and the supply of non-drinking water in circumstances where it could reasonably be mistaken for drinking water.

Consumer protection: price regulation of Sydney Water/Hunter Water will be maintained

- Existing price regulation by the Independent Pricing and Regulatory Tribunal (IPART) of water and wastewater services supplied by Sydney Water and Hunter Water will be retained, in accordance with the *Independent Pricing and Regulatory Tribunal Act 1993*.

- New licensed suppliers will not be subject to price regulation, except where they are monopoly service providers. The legal basis for price regulation of a monopoly service not provided by a government agency will be established under the *Independent Pricing and Regulatory Tribunal Act 1993*.

Licensing regime

- The existing regime for the regulation including licensing of incumbent water supply authorities will be maintained.

- New entrants will require a licence issued by the Minister for Water Utilities (the Minister).

- In the future, the regime will be reviewed with a view to migrating incumbents to the new regime.

- IPART may provide advice to the Minister with respect to licence applications and standard licence conditions.

- All new entrant suppliers of drinking water through a reticulated network will be required to be licensed.

- All new entrant suppliers of wastewater collection and treatment services through a reticulated network will be required to hold a licence.

- All suppliers of non-drinking (eg. recycled) water through a reticulated network will be required to hold a licence, except where that reticulated network is exclusively used to supply non-drinking water to large consumers for industrial use only.

- Before granting a licence, the Minister must consult with NSW Health and the Department of Environment and Conservation and invite comment on the application from the public and the incumbent supply authority.

- Licences will contain two types of conditions - legislative (eg. compliance with applicable health and environmental legislation) and conditions imposed by the Minister. The latter may include standard conditions (including applicable quality standards eg. drinking water guidelines) as well as specific conditions imposed on a case-by-case basis.

- It is expected that, initially, licence conditions will largely be determined on a case-by-case basis but that, over time, increasingly standard conditions will be developed.

- Licences will only be permitted to be granted in regions prescribed by the Minister. Initially the only regions that will be prescribed will be the Sydney, Illawarra, Blue Mountains and Hunter regions.

- The operation of the licensing framework will be reviewed at a future date (once competition has emerged) to ascertain whether the policy objectives of the Act remain valid, and whether the regime remains appropriate for securing those objectives.

1. Objects

The objects of the new regime will include:

- to ensure water quality and safety, and the protection of public health
- to ensure the safe, reliable and equitable supply of essential water and wastewater services to the community
- to contribute to the protection, restoration and enhancement of the quality of the environment in New South Wales, having regard to the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991,* and
- to promote competition in the water and wastewater industries, for the purpose of promoting the long term interests of consumers with respect to the price, quality, safety, reliability and security of drinking water, recycled water and wastewater services.

2. Public health laws

The new regime will not derogate in any way from existing public health laws. Those laws will be clarified to ensure that they apply equally to new competitive suppliers. The provisions of the *Public Health Act 1991* relating to drinking water will be retained, and will be clarified to ensure that they apply to all public and private suppliers of drinking water who sell to consumers through a reticulated network. Those provisions include conferral of power on NSW Health to issue advice to the public (eg. 'boil water' advices), to enter and inspect premises, to demand information, and to order the closure of a water supply.

The *Public Health Act* will also be amended to introduce new offences relating to the supply of unsafe water. Failure to comply with these prohibitions will render the offender(s) liable for the penalties set out in the *Public Health Act.* Non-compliance will also constitute a breach of a supply licence (see section 9 below). The new offences will include:

- it will be an offence to supply drinking water from a reticulated system that is, or is likely to be, not fit for human consumption or that constitutes, or is likely to constitute, a risk to public health
- it will be an offence to supply non-drinking water from a reticulated system that is, or is likely to be, not fit for any reasonable intended purpose or that constitutes, or is likely to constitute, a risk to public health, and
- it will be an offence to supply non-drinking water from a reticulated system in circumstances where it could reasonably be mistaken for drinking water.

The provisions of the *Food Act 2003* relating to 'unsafe food', which currently apply to drinking water supplied by incumbent water authorities, will be retained, and will also be clarified to ensure that they extend to new competitive suppliers. Those provisions prohibit the sale of 'unsafe food' or 'unsuitable food'. They also empower the Food Authority to, among other things, give directions, inspect and seize things, and take samples.

The powers of the Director-General of NSW Health under the *Fluoridation of Public Water Supplies Act 1957* will be extended to all suppliers of drinking water. However, in the case of private-sector suppliers, the Director-General will be authorised to issue a direction requiring fluoridation without requiring a referral from the supplier.

3. Environmental and planning laws and approvals

The new regime will not derogate in any way from existing environmental and planning laws, including the requirements to obtain development approvals and environmental licences, or licences to access water sources under the *Water Act 1912* or *Water Management Act 2000*.

4. Consumer protection: Price regulation

The existing price regulation by IPART of Sydney Water's and Hunter Water's essential water and wastewater services supplied to small and large consumers will be retained. All consumers will continue to be entitled to choose to receive essential water and wastewater services from Sydney Water or Hunter Water at a price no higher than the maximum price determined by IPART.

The prices charged by new licensees will not be regulated, except in circumstances where they enjoy a monopolistic position (eg. in the future, a licensee may provide reticulated recycled water supply to a new development area in which a SEPP requires all developers to connect to that service). The legal basis for price regulation of monopoly services not provided by a government agency will be established under the *Independent Pricing and Regulatory Tribunal Act 1993*.

5. A new licensing regime

Subject to the exemptions below, the central provision of the new regime will be a prohibition on the following activities:

- supplying drinking water from or by means of a reticulated network
- supplying wastewater treatment and collection services from or by means of a reticulated network, or
- supplying non-drinking water (including recycled water) from or by means of a reticulated network. Non-reticulated or decentralised recycling will be regulated through the *Local Government Act 2003* which will be supported by new *Guidelines for the Management of Private Decentralised Recycled Water Systems* currently the subject of consultation. See www.deus.nsw.gov.au

The exemptions from the prohibition will be:

- if the supplier holds a relevant supply licence
- if the supplier is a prescribed water supply authority under the *Water Management Act* 2000 (i.e. Sydney Water and Hunter Water), or
- if the supplier is a prescribed water supply authority under the *Water Management Act 2000* (i.e. Sydney Water and Hunter Water), or if the supplier is supplying non-drinking water (including recycled water) from or by means of a reticulated network that exclusively supplies non-drinking water to large consumers for industrial use only.

The exemption from the licensing requirement for networks exclusively supplying recycled water to large consumers for industrial use only is proposed because:

- a number of arrangements of this type have already been negotiated that have regard to a broad range of public health and other risks
- these negotiations currently occur in a context of equivalent bargaining power and significant resources, suggesting consumer protection obligations designed to address asymmetric market power are unnecessary, and
- the public health issues associated with the use of recycled water for industrial purposes are already subject to extensive regulation in the context of occupational health and safety laws.

Incumbent water supply authorities will not be required to obtain a new licence, but will continue to be regulated under existing instruments (including the operating licences for Sydney Water and Hunter Water).

New competitive entrants will be subject to the new licensing regime, which, where appropriate, will impose obligations equivalent to those required of existing suppliers (eg. excluding obligations relating to the incumbents' role as supplier of last resort of essential water and wastewater services).

To the extent possible, obligations which are common to both the incumbent and new entrants will, over time, be migrated to regulations, and incorporated by reference into the conditions of both incumbents' operating licences and new entrants' licences. In the future, the regime will be reviewed with a view to migrating incumbents to the new licensing regime. It is not proposed that incumbent water authorities be made subject to the new licensing regime at the outset, given:

- they are already required to hold a licence under their enabling legislation
- the administrative costs of imposing a new licensing regime on them
- the uncertainty surrounding the extent to which competition will materialise in the markets in the immediate term
- the special obligations of incumbents with respect to being the supplier of last resort of essential water and wastewater services, and overall network stability and management, and
- IPART's recommendation that an adaptive management approach is appropriate.

6. Key features of the licensing regime

Licenses will be issued by the Minister for Water Utilities. Licences will be non-exclusive (i.e. more than one licence can be issued for a geographical region) and non-transferable (i.e. licences cannot be sold or otherwise transferred). A person will be able to apply for and hold multiple licences.

Geographical coverage

A licence will only authorise the licensee to operate within the area or areas specified in the licence. Licences will only be permitted to be granted in those areas which the Minister has, by order, prescribed. Initially those areas will be the Sydney, Blue Mountains, Illawarra and Hunter regions (namely the operating licence areas of Sydney Water and Hunter Water).

Types of licences, and endorsements

There will be three generic licence types available under the regime, corresponding to the prohibitions above. That is:

- Drinking Water Supply Licence
- Non-drinking (i.e. Recycled Water) Water Supply Licence, and
- Wastewater Collection and Treatment Licence.

Licences may have attached to them one or more 'endorsements', which will be determined by order of the Minister. Endorsements are sub-categories of licences of a particular type. By way of illustration only, it may be that a Drinking Water Supply Licence could have two types of endorsements, either a 'supplier of last resort' endorsement or a 'standard' endorsement. Suppliers who hold a licence with a 'supplier of last resort' endorsement will be subject to different conditions from those who hold simply a 'standard' licence. For example, they may be subject to a condition which requires them to supply any customer who wishes to acquire services within a specified geographical area at the going price.

Licence conditions

Licences will be subject to two types of conditions:

- those imposed by legislation (including regulations), and
- those imposed by the Minister.

The Minister may, by order, publish standard conditions which will apply to all licences of a particular category and carrying a particular endorsement. The Minister may impose such additional conditions on a particular licence as the Minister considers appropriate.

Initially, it is expected that the development of terms and conditions for a licence will be the subject of case-by-case evaluation. It is expected that over time, common licence conditions will be established, and will be included in standard conditions and regulations.

7. Procedure for licence applications

General procedures

The Minister may, by order, determine the procedures that are to apply in respect of receiving applications for, and issuing, licences, including the information required to be included in an application. The Minister may, by order, prescribe a licence application fee.

IPART may provide advice to the Minister with respect to licence applications and standard licence conditions. The Minister may accept or reject IPART's advice in part or whole.

Before granting a licence the Minister must:

- consult with NSW Health and the Department of Environment and Conservation
- publish a notice of the licence application in a newspaper circulating throughout NSW, and invite interested persons to make submissions, and
- give notice to the incumbent water supply authority authorised under the *Water Management Act 2000* (or any supplier of last resort of essential water and wastewater services) operating in the area to which the proposed licence relates.

Grounds for refusal of grant of licence

The Minister must not issue a licence unless the Minister is satisfied:

- that none of the applicant's directors or senior executive officers are disqualified from managing corporations under the *Corporations Act 2001*
- that the applicant has provided sufficient information to satisfy the Minister that it has the capacity to comply with all of the licence conditions, including with respect to its technical resources
- that the applicant is a body corporate registered in Australia or a public authority
- that none of the applicant, its directors, senior executive officers, controlling shareholders or any related bodies corporate is the subject of a banning order (see section 9 below)
- that the applicant is not currently in breach of a condition of an existing licence, and does not have an unpaid monetary penalty in respect of such a breach
- of any other grounds prescribed by regulation under this framework, and
- of any other grounds that the Minister considers relevant in the public interest, having regard to the objects of the regime.

The Minister may, before granting a licence, require the applicant to demonstrate that it has obtained appropriate insurance policies (eg. public indemnity insurance). The continued maintenance of such policies will be a licence condition.

Publication

Once granted, the Minister must publish notice of the licence in the Government Gazette, including the name of the licensee, the term of the licence, the area(s) to which the licence relates, and the place at which the licence may be inspected.

A licensee must ensure that its licence is available for inspection during business hours at an address within the area covered by the licence or on its website, and must provide a copy free of charge to any person on request.

Licence fees

The Minister may, by order, impose specified charges for the licence to recover the real costs of administering the licence. The charges may be an upfront sum, or periodic payments, or a combination of both.

Renewal

Licences will be issued for a fixed term of a maximum 15 years. Licensees will need to apply for a new licence when their current licence expires. Applications for a new licence will be able to be made prior to the expiry of the current licence, to ensure continuity between the expiry of the old licence and the commencement of the new licence.

8. Licence conditions

Legislative licence conditions will include the following **public health** conditions:

- compliance with requirements of *Public Health Act 1991, Food Act 2003* and any directions given by the Director-General of NSW Health under the *Fluoridation of Public Water Supplies Act 1957*
- compliance with specified national and other water quality guidelines
- requirements to maintain and operate facilities in a proper and efficient manner so that public health is protected and environmental harm and system interruptions are minimised
- requirement to develop appropriate emergency management procedures
- requirement to report adverse health events, and
- requirement to implement such other measures to protect public health as required by the Minister.

Legislative licence conditions will include the following **environmental protection** conditions:

- compliance with applicable environmental and planning laws, and
- obtaining, and compliance with, applicable environmental licences and planning approvals.

Legislative licence conditions will include the following **consumer protection** conditions:

- compliance with requirements for consumer rights, complaints, switching and standard contracts (see below), and
- compliance with other applicable regulations. (eg. plumbing code etc).

Legislative licence conditions will include the following **governance and reporting** condition:

- compliance with requirements to make and keep (and provide to IPART and/or the Minister) specific records.

9. Enforcement of licence conditions

The Minister for Water Utilities and IPART will be responsible for the enforcement of licences, including the issuing of penalty notices and rectification directions.

Breach of licence conditions

Breach of a legislative licence condition will be an offence. The offence will be a continuing offence, committed each day until rectified. A licensee's liability for breach of a licence condition will be strict. Licensees will be responsible for compliance with licence conditions by their employees and contractors. Directors may be subject to personal liability for a breach of a legislative licence condition, subject only to defences of lack of knowledge, lack of control, or due diligence.

Ancillary orders may be sought at the same time as a person is convicted of a breach. These could include orders to pay compensation, injunctions, declarations, and banning orders (i.e. orders banning specified individuals from owning shares in, or participating in the management of, a company which holds a water or wastewater supply licence in the future).

Auditing

IPART will be authorised to conduct periodic compliance audits and to undertake ad hoc investigations (in the same way as under Division 7 of Part 3 of the *Independent Pricing and Regulatory Tribunal Act 1993).* IPART's costs of audits and ad hoc investigations of licence compliance will be recoverable from the licensee.

IPART may by order direct a licence holder to make and keep specified records and provide specified records to IPART or include this requirement as a condition of the licence.

EWON

In addition, licensees will be required to join the Energy and Water Ombudsman (EWON) or other approved scheme.

Monetary penalties and rectification directions

Primary enforcement mechanisms for breaches of licence conditions will include:

- monetary penalties
- rectification directions
- suspension or cancellation of licence, or
- banning orders (for companies or individuals).

10. Powers of licensees

The legislation will include an ability for the Minister to provide a general authorisation to drinking water, non-drinking water and wastewater service providers to enable them to carry out works, including works on a public road. Such an authorisation will be automatically included in supply licences. In addition, service providers who do not hold and are not required to hold a licence (eg. suppliers of recycled water to industrial users only) may apply to the Minister for an authorisation.

The authorisation will include:

- exclusion from local council approval requirements with respect to:
  - the opening and breaking up of the soil and pavement of a public road or public reserve, and
  - the opening and breaking up of any pipe, sewer, drain or tunnel in or under any ground under a public road or public reserve.
- obligation to notify and invite submissions from the relevant local council (and if relevant the Roads and Traffic Authority (RTA))
- obligation to develop commercial agreements with road owners to ensure the full economic cost of road breaking is recovered where the licensee breaks a road, and
- obligation to provide information to relevant local councils and the incumbent water supply authority on their network assets in the local council area other than those located on land owned by the licensee.

There will be no compulsory acquisition power.

11. Regulations

Regulations (which will also become legislative licence conditions) may be made with respect to the following:

- water quality, safety and reliability
- consumer rights, complaints and the requirement for suppliers' standard form of contract
- customer switching, debt and disconnection
- monitoring and record keeping
- the measuring of water supplies (i.e. metering)
- the measuring of sewage collections
- the use of water for fire-fighting provisions
- the discharge of trade waste into sewers
- non-drinking water
- demand management
- emergencies and incident management
- asset management, maintenance and renewal, and
- other matters relating to public health, the environment and consumer protection.

12. Third party offences

New offences will be necessary to prevent third party interference with water networks of the new licensees. These will include prohibitions on:

- stealing drinking or non-drinking water supplied by a licensed supplier
- interfering with water works
- interfering with meters
- making unauthorised connections to water works
- contaminating drinking water or non-drinking water, and
- discharging hazardous materials into a reticulated wastewater network without authorisation.

13. Supplier of last resort and other community service obligations

The *Sydney Water Act 1994* and Operating Licence and the *Hunter Water Act 1991* and Operating Licence will be reviewed and amended with a view to:

- clarifying their obligation to supply
- clarifying their role as supplier of last resort of essential water and wastewater services
- clarifying their role as supplier of bulk water for on-sale by competitive suppliers, where relevant
- facilitating cost recovery of that infrastructure required to fulfil supplier of last resort obligations
- clarifying the incumbents' public policy, community service obligations (eg. concession to those in economic need) and customer service requirements (including the terms of the customer contract), and
- migrating common standards to regulations, which will be incorporated in both the operating licences of incumbents and the licences of new entrants.

14. Regulatory separation

To ensure independence and transparency through regulatory separation, the following changes to regulatory responsibilities are proposed:

- Department of Energy, Utilities and Sustainability (DEUS) to coordinate delivery of demand management programs (to be funded by licensees who supply water sourced from groundwater, river, dams or other surface water), and
- DEUS will be able to levy fees for demand management purposes where the licensee is the supplier of water that has been sourced from groundwater, a river, dams or other surface water.
- amend Part 6A of the *Energy and Utilities Administration Act* to allow the Minister to make an order requiring a licensee to contribute to the Water Savings Fund.

15. Review of the new legislative regime

It is proposed that the new legislative regime be subject to a future review date to ascertain (once competition has emerged) whether the policy objectives of the Act remain valid, and whether the regime remains appropriate for securing those objectives.

Draft framework for consultation:
Water and wastewater access regime

Simplified outline

- The regime will apply to services provided by significant water and wastewater infrastructure, and will initially apply in the greater Sydney and Hunter regions.
- A service may be 'declared' to be covered by the access regime if the Minister, with advice from the Independent Pricing and Regulatory Tribunal (IPART), is satisfied it meets prescribed 'declaration criteria'.
- The effect of coverage is that an access seeker will have an enforceable right to require the service provider to negotiate 'in good faith' for access to a covered service.
- The regime will facilitate commercial negotiation for access to covered services, and will provide for IPART to arbitrate disputes where commercial negotiations fail.
- IPART will not be able to make a determination that would require an existing user to reduce its usage of the service, or would result in usage exceeding the capacity of the facility without the consent of the service provider.
- Services can be protected from declaration on the basis of:
  - being provided following a government-sponsored competitive tender which establishes reasonable access terms;
  - being granted a 'binding no-coverage ruling' (i.e. where the Minister certifies that the declaration criteria are not met); or
  - a voluntary access undertaking made by the service provider.
- The operation of the access regime will be reviewed within 5 years of its commencement.

1. Object

The object of the access regime is to promote the economically efficient use of, operation of, and investment in, significant water and wastewater infrastructure, and to promote effective competition in upstream and downstream markets, while recognising the pre-eminence of:

- ensuring water quality and safety, and the protection of public health
- protecting, restoring and enhancing the quality of the environment in New South Wales, having regard to the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*
- ensuring the continued supply of water and wastewater services, and
- commercial negotiations between an access seeker and service provider.

2. Geographic coverage

Initially, the regime will apply to water and wastewater services provided by means of significant infrastructure facilities located in the Sydney, Illawarra, Blue Mountains and Hunter regions (namely the operating licence areas of Sydney Water and Hunter Water).

3. Covered services

The Minister may 'declare' a particular service to be covered by the access regime if the Minister is satisfied that it meets the declaration criteria. A declaration of a service by the Minister is to be made by order published in the Government Gazette, and a public record of covered services will be maintained.

4. Declaration

Declaration criteria

A service will be able to become covered if it meets all of the following declaration criteria:

- the infrastructure facility providing the service is significant
- it would not be economically feasible to duplicate the facility
- access to the service is necessary in order to promote a material increase in competition in a downstream or upstream market
- 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
- access would not be contrary to the public interest.

For the purposes of this access regime, a facility is 'significant' if it is of State significance having regard to matters such as the size and nature of the facility, its importance to the economy, and the potential importance to the economy of providing access to the facility. A service will not be able to become a 'covered service' if it comprises the supply of goods, the use of intellectual property or the use of a production process, except to the extent that that supply or use is an integral but subsidiary part of the service.

Declaration process

Declaration can apply to services regardless of whether the relevant infrastructure is publicly or privately owned. An application requesting declaration must be made in writing to the Minister. The Minister may issue guidelines as to the information that must be included in a declaration application, which must include a statement that the applicant has attempted and failed to negotiate for access with the service provider. The Minister will not have to consider a request for declaration that is spurious.

The Minister may consider a service provided by government-owned infrastructure for declaration without a third party application. Such a declaration must still follow the process set out below.

The Minister must seek advice from IPART as to the application of the declaration criteria to the particular service. The Minister may seek supplementary advice from IPART as to the terms of a declaration, including definition of the service and an appropriate duration for the declaration.

The regime will provide for specific time limits in respect of: when the Minister must seek advice from IPART (within 21 days); when IPART must provide its recommendation (within 4 months); and when the Minister must make a decision (within 2 months). These time limits will be subject to stop-the-clock provisions but only in exceptional circumstances and, in the case of the time limits applying to IPART, only with the Minister's approval.

The Minister's decision on whether to declare the service, together with reasons and IPART's advice, will be required to be published. Public submissions must be invited and taken into account prior to declaration.

The Minister's decision must include the duration for the declaration. A request for revocation of a declaration may be made where there has been a material change in circumstances (i.e. where one or more of the declaration criteria are no longer met). The assessment, consultation, time limits etc for revocation requests will mirror those applying to declaration applications.

Review of the decisions of the Minister will be limited to existing avenues of judicial review.

5. Negotiation

In the first instance, terms and conditions for third party access to services provided by means of significant infrastructure should be on the basis of terms and conditions commercially agreed between the access seeker and the service provider.

Access seekers will be given a right to negotiate 'in good faith' for access to a covered service. A service provider will be required to use all reasonable endeavours to accommodate the requirements of persons seeking access.

Providers of covered services will be required to, on request, make available within 28 days an information package outlining the process for seeking access to covered services, which would include the information required of an access request, and an indicative timeframe and process for negotiations.

The parties may develop and agree a set of negotiation protocols, whether or not based on the standard set developed by IPART. If the parties have not agreed a set of negotiation protocols, then the standard set developed by IPART will apply.

IPART must develop a standard set of negotiation protocols which include:

- procedures for conducting meetings
- procedures for information exchange and record keeping
- arrangements for sharing the costs of negotiation, and
- timeframes for a party to respond to requests from the other party.

IPART may, on the basis of a request from one of the parties, give the other party a written procedural direction requiring the party to act in accordance with one or more of the applicable negotiation protocols. Failure to comply with such a direction will not be an offence.

IPART may, for the purposes of facilitating negotiations in a timely manner, but only if both parties have jointly requested, attend or mediate at negotiations (at the parties' cost). An IPART representative is not disqualified from arbitrating a dispute by reason of having previously attended or mediated at negotiations.

6. Arbitration

Where negotiations fail, an access seeker or a service provider will be able to refer matters to IPART for arbitration. A dispute will be taken to exist with respect to the access regime if, following negotiations, the access seeker is unable to agree with the service provider on one or more aspects of access to the service, or if a party fails to comply with a written procedural direction from IPART (see section 5).

Access disputes will be subject to arbitration by IPART in accordance with the provisions in Part 4A of the *Independent Pricing and Regulatory Tribunal ACT 1993* and, subject to that Part, to the *Commercial Arbitration Act 1984*. IPART will be authorised to arbitrate disputes under that Part even where they do not involve government-owned infrastructure.

In addition to the provisions of Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1993* and the *Commercial Arbitration Act 1984*, the water and wastewater access regime will provide that:

- IPART may, on the application of the service provider, refuse, suspend or terminate an arbitration, if it is satisfied that the access seeker would be required to hold a water or wastewater supply licence to conduct its proposed business, and that it would be unlikely to be granted that licence
- IPART's costs of the arbitration (including the costs of any counsel or other experts appointed by IPART to assist the arbitration) will be borne by the parties. Costs will be apportioned equally between the parties unless IPART determines that a different proportion shall apply, having regard to any costs order made under s.34 of the *Commercial Arbitration Act 1984* and any other matters IPART considers relevant, including:
  - whether, and the extent to which, each party has engaged in 'good faith' negotiations
  - whether, and the extent to which, each party has complied with the reasonable requests of the other party
  - whether, and the extent to which, each party has complied with any guidelines or directions issued by IPART
  - any offers and concessions previously made or proposed by a party
  - the outcome of the arbitration including whether, and the extent to which, the outcome of the arbitration is more favourable than any previous offer rejected by either party, and
  - the conduct of the parties to the arbitration, or their representatives, including any delays.

Section 24B (2) of the *Independent Pricing and Regulatory Tribunal Act 1993* (public consultation in respect of an access dispute) and Section 15 of that Act (matters to be considered) will not apply. An access agreement determined by arbitration will contain an implied term that any subsequent dispute relating to a proposal to vary or terminate the agreement may be referred to IPART for arbitration.

IPART's arbitration functions will be required to be ring-fenced from its regulatory functions in relation to water and wastewater (eg. licensing). IPART must publicly release a statement of its findings and determination outcomes (but not reasons), but IPART will not be required to publish any confidential information.

IPART will be required to make a determination within 6 months, provided that it has been given sufficient information. IPART will have the discretion to determine when the 6 month time limit is suspended. Grounds for suspending time limits include: requests for further information from service providers (provided these are on reasonable grounds); consultation periods during which the regulator seeks submissions from third parties or the community; and if the parties (with the consent of the arbitrator) are engaged in bona fide settlement negotiations.

If a party fails to comply with a direction by IPART to provide relevant information, IPART may, if it is necessary to achieve a timely determination through arbitration, make a determination through arbitration in the absence of that information. For that purpose, IPART may make any assumptions necessary and, in doing so, will be entitled to adopt that assumption which is least favourable to the party which has failed to furnish the requisite information.

The matters which IPART is required to take into account are already set out in s.24B of the *Independent Pricing and Regulatory Tribunal Act 1993*. Section 24B of the *Independent Pricing and Regulatory Tribunal Act 1993* also includes the matters set out in clause 6(4)(i) and clause 6(4)(l) of the *Competition Principles Agreement*, the first of which are:

- the owner's legitimate business interests and investment in the facility
- 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
- the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake
- the interests of all persons holding contracts for use of the facility
- firm and binding contractual obligations of the owner or other persons (or both) already using the facility
- the operational and technical requirements necessary for the safe and reliable operation of the facility
- the economically efficient operation of the facility, and
- the benefit to the public from having competitive markets.

A service provider must notify all other existing users of a facility of an arbitration concerning the facility. An existing user is entitled to make submissions to IPART in respect of an arbitration concerning the facility, whether or not it is made a party to the arbitration.

IPART must not make a determination that:

- would have the effect of rationing the use of the service to the detriment of existing users (that is, an existing user, including the service provider, will not be required to reduce its current usage of the service in order to accommodate the needs of a new access seeker)
- having regard to the requirements of existing users, would result in utilisation of the facility exceeding the current capacity of the facility without the consent of the service provider
- would result in the access seeker becoming the owner (or one of the owners) of any part of the facility, or of extensions to the facility, without the consent of the service provider, or
- would require the service provider to extend or permit extension of the facility used to provide the service, and to provide interconnection services to the access seeker's own facility, unless:
    - it is technically and economically feasible
    - the extension is consistent with safe and reliable operation of the facility
    - the owner's legitimate business interests and investment in the infrastructure are protected, and
    - the terms of access take into account any extension costs and any economic benefits to the parties resulting from extension.

IPART may make a determination that would otherwise impede the current or future ability of an existing user to obtain a service, but only if IPART has considered whether there is a case for compensation to be paid to the existing user by a party to the arbitration and, if appropriate, such compensation has been determined by IPART.

The determination yielded through arbitration does not have to require the service provider to provide access to the services to the third party.

Access pricing principles

IPART, when arbitrating access disputes, will be required to set access prices having regard to the following pricing principles. Access prices must:

- generate expected revenue for a covered service that is at least sufficient to meet the efficient costs of providing access to the regulated service or services and include a return on investment commensurate with the regulatory and commercial risks involved
- allow multi-part pricing and price discrimination when it aids efficiency
- not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher, and
- provide incentives to reduce costs or otherwise improve productivity.

These pricing principles must be implemented in a manner consistent with any relevant existing pricing determinations in respect of water and wastewater services, including where applicable the maintenance of 'postage stamp' pricing. In addition, IPART may issue guidelines on the application of the pricing principles.

7. Access agreements

Terms of access agreements

Nothing in an access agreement should render an infrastructure owner in breach of or unable to meet a condition of its operating licence or any other legal requirement, including any pricing determinations or 'supplier of last resort' obligations. Access agreements must include a prohibition on either party engaging in conduct for the purposes of hindering access to the service by another person.

Access agreements must not inhibit an access seeker or infrastructure owner providing necessary information to IPART or to the Minister. Access agreements must not inhibit the infrastructure owner from creating, maintaining, and disclosing information necessary to facilitate access by other access seekers. An access agreement must not require or enable access to be granted prior to all relevant approvals under the legislation being granted (but an agreement may be signed subject to a condition precedent that such approvals be obtained).

The infrastructure owner will not be required to provide access on exactly the same terms to all access seekers.

Access agreements may provide for the entry by the parties into 'loan and credit' arrangements provided that to do so is technically and economically feasible, and that the owner's legitimate business interests are protected.

IPART may issue guidelines that outline the topics that it will address in an arbitrated access agreement, such as:

- the duration of the agreement
- description of the service to be provided and the facilities to be employed
- the price of the service
- terms governing access to the service
- processes for addressing extensions or interconnections, and allocation of the costs (including whether or not the access seeker must contribute to the upfront costs of any extensions)
- project specifications and operating arrangements such as the location and specifications of injection and off-take points
- consumer matters such as switching protocols
- safety and security related matters such as notification requirements for maintenance, responsibilities for urgent maintenance, emergency measures, and incident management to address health and safety issues, and risks to supply system integrity or security, and
- dispute resolution mechanisms and enforcement (including submission to the jurisdiction of the Courts of New South Wales).

8. Other provisions

The infrastructure owner and access seeker will be prohibited from engaging in conduct for the purpose of hindering access to that service by another person. This will be an offence, and IPART and any other person will be authorised to apply to the Court for an injunction to enforce compliance.

Infrastructure owners will be required to maintain separate accounting arrangements for elements of the business covered by the access regime (structural separation will not be required).

9. Facilitating efficient new investment

Competitive tender exemption

A service provided by means of a facility provided following a government-sponsored competitive tender process will be exempted from declaration if IPART approved the access terms and conditions submitted as part of that tender process.

Binding no-coverage rulings

A proponent of a new infrastructure project, or an existing infrastructure owner of a service which has not been declared, may apply to the Minister for a binding no-coverage ruling, which would protect the facility from declaration for a set period of time on the basis that it does not meet the declaration criteria.

The procedure for making binding no-coverage rulings will mirror the declaration procedure. A binding no-coverage ruling will include a duration during which time it cannot be revoked, unless the information relied on in making the ruling is proved to be false or intentionally misleading.

Access undertakings

A proponent of a significant infrastructure project, or an existing infrastructure owner of a service, may submit an access undertaking to IPART outlining the terms on which it will agree to provide access to its service(s).

IPART may approve the undertaking if it thinks it appropriate to do so having regard to the following matters:

- the legitimate business interests of the provider and investment in the facility
- the public interest, including the public interest in having competition in markets
- the interests of persons who might want access to the service
- whether access to the service has already been declared under this access regime or is the subject of an access regime, and
- any other matters that IPART considers relevant.

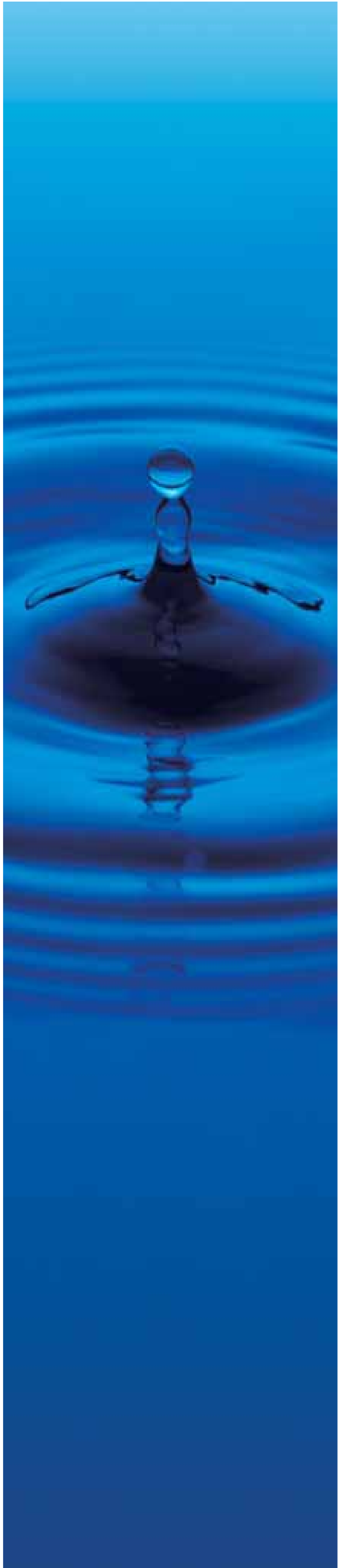
If IPART approves the undertaking, then the infrastructure owner must provide access in accordance with those terms, and services provided by that facility cannot be declared.

IPART must not approve an undertaking unless it includes a dispute resolution provision providing for arbitration by IPART in accordance with its arbitration powers under the *Independent Pricing and Regulatory Tribunal Act 1993*. Before approving an access undertaking IPART must invite and consider public submissions on the proposed undertaking. IPART may issue guidelines for the approval of access undertakings.

An access undertaking may be lodged and approved post-declaration, in which case the owner may apply to have the declaration revoked. The provider may only withdraw or vary the undertaking with the consent of IPART. IPART will maintain a public register of access undertakings.

10. Review

The access regime will be subject to a review after a period of not more than 5 years.



A water plan from the
NSW GOVERNMENT