

# Draft Position Paper Number 1

## Capital Contribution Principles and Commonwealth Funding to the Burdekin Scheme

### 1. Background

Submissions have been received from some stakeholders on the principles for recognition of capital contributions, and the nature of Commonwealth funding to the Burdekin Scheme. In addressing these issues, the Authority has considered:

- principles for recognition;
- the Commonwealth Government's view of its intentions;
- other issues raised by BRIAC;
- statutory declarations made by parties involved in the development of the Scheme;
- statements made regarding government funding in the Mareeba Dimbulah Scheme;
- issues raised by CANEGROWERS; and
- water charges for the Townsville Thuringowa Water Board.

### 2. Principles for Recognition of Capital Contributions

#### *Draft Report*

In its Draft Report, the Authority:

- defined capital contributions as capital payments made towards the capital cost of an asset by a third party with the intention of reducing the capital outlay by the owner of the asset and with the intention and expectation that the payment will be recognized for pricing purposes; and
- noted that recognition of capital payments for pricing purposes has been proposed by stakeholders on the basis of:
  - equity, in that users should not be required to pay a price that includes a return on capital for assets that have already been funded by them or by the government on their behalf; and
  - economic efficiency, in that future investment could be discouraged if users who are required to make capital payments do not receive a benefit proportionate to their payments.

#### *Stakeholder Comment*

In its response to the Authority's Draft Report, BRIAC stated that the Authority's criteria for recognition of capital contributions should not require an expectation that the contribution will be recognised for pricing purposes (p. 8).

Similarly, the Australian Sugar Milling Council (ASMC) stated that it was not necessary to establish that the parties had an intention and reasonable expectation that the capital payment would be recognised for pricing purposes. The ASMC indicated that intentions and expectations would only be relevant in determining whether contributors have legal rights in equity or in contract to the assets, and the Authority is not determining this issue.

The ASMC proposed that payments should be recognised as capital contributions where contributions were made and these contributions have not been otherwise recognised.

The ASMC went on to say that, if the Authority maintains that an intention and expectation is required, the Authority should provide more specific information about how this intention should be shown, particularly where no formal agreement is in place.

The Proserpine Irrigators Committee noted that references to capital contributions in correspondence sent by the Queensland Government in relation to the Proserpine Scheme were non-specific and subject to alternative interpretations.

SunWater indicated in its response to the Authority's Draft Report that documentation should clearly indicate a pricing intention before payments are recognised as capital contributions (p. 1). Furthermore, SunWater stated that payments should not be treated as capital contributions where they were paid in order to purchase an asset or other right.

#### *QCA Analysis*

The Authority remains of the view that the intentions of the parties at the time a payment is made are crucial in determining whether a payment by a particular party is a capital contribution or not.

So far as government payments are concerned, the multi-faceted nature of government is such that it will from time to time provide funds for projects for a variety of alternative purposes. In some instances, funds may be provided purely for financing purposes. In others, the funds may be intended to produce benefits for different groups within the community (not only for customers). It therefore can not be assumed that all government payments are intended to reduce prices to customers. The intentions of the parties at the time the payment is made are crucial.

Similarly, payments made by customers to a service provider could represent a prepayment for services, or even a donation. Accordingly, it can not be assumed that all up-front payments from customers are intended to be a capital contribution. Again, the intentions of the parties at the time the payment is made are crucial.

So far as the appropriate evidence to demonstrate the intentions of the parties is concerned, a formal agreement between the parties would probably provide the clearest evidence.

Without a formal agreement, a judgement as to the intentions of the parties must be made on the basis of all available evidence. Consistent documentary evidence from relevant parties at the time the payments were made may lend weight to a particular interpretation. The Authority cannot, however, be prescriptive as to the nature of this evidence, as it needs to consider each issue on its merits. It is a question of the facts of each case.

The Authority does not consider that the material sent to the Proserpine irrigators is relevant to the Burdekin Scheme.

In respect of SunWater's submission, no new material was raised to cause the Authority to change its considered position in respect of the treatment of payments paid to purchase an asset or other right.

### 3. Commonwealth Funding

#### *Background*

From 1982-83 to 1992-93, the Commonwealth Government provided \$197.4 million towards expenditure on the Burdekin Falls Dam and associated infrastructure, under the *National Water Resources (Financial Assistance) Act 1978*. Commonwealth funding was provided through annual non-repayable grants that reimbursed the Queensland Government's expenditure on the Burdekin Falls Dam and associated infrastructure.

In its Draft Report, the Authority assessed all information available at that time on Commonwealth funding for the Burdekin Falls Dam. After assessing this information, the Authority was unable to find any evidence that the funding was provided with the intention that it should result in a corresponding reduction in the price of water to users, regardless of their capacity to pay. Indeed, the weight of the evidence suggested that the key issue was one of funding the development, not pricing.

On balance therefore, the Authority considered that the Commonwealth funding was not a capital contribution.

#### *Commonwealth Government's View of Intentions*

The Commonwealth Department of Agriculture, Fisheries and Forestry – Australia advised that the general intention of Commonwealth funding was to provide financial assistance for water resource projects and that, while the Commonwealth Government Water Policy of the time notes that 'water prices need to be set at a level to cover the full cost of water supply including adequate depreciation', pricing policies were a matter for the Queensland Government.

The Commonwealth Minister for Agriculture, Fisheries and Forestry, the Hon Warren Truss, has submitted that, in his view, the Commonwealth grant was intended to be a capital contribution and to result in lower prices for users and advised that :

- as the grant was non-repayable and non-interest bearing, the Commonwealth had no intention of recovering these funds and the Minister assumed 'that Queensland would not recover these sunk costs either';
- as the Commonwealth grant was provided by way of non-repayable non-interest bearing grants, it follows that it was the intention of the Commonwealth to ensure that the price of water to users would be less than it would otherwise have been;
- 'It is therefore clear to me that the Commonwealth funding for the dam was provided with an expectation that it would be used to make water affordable to users, even though this may not have been specifically documented in those pre-COAG-agreement times'.
- as the agreement and construction of the dam were both before the recognition of full cost recovery principles by COAG in 1994, there is no requirement under the COAG water reforms for Queensland to recover the construction cost; and

- that other states are viewing capital investment prior to 1994 as sunk costs but, in line with their commitments under the COAG agreement, are seeking to recover future asset replacement and refurbishment costs.

BRIAC referred to Minister Truss' correspondence as evidence of the Commonwealth Government's intention that the grant be viewed as a capital contribution (p. 2 of their submission in response to the Authority's Draft Report).

### *QCA Analysis*

The Authority accepts the Minister's statement that the Commonwealth payment was made to the Queensland government on a non-interest bearing and non-repayable basis. Indeed, that is totally consistent with the Authority's understanding of the matter.

However, the Minister's comments do not provide any contemporaneous evidence regarding the more difficult issue of whether, at the time the payments were made, the Commonwealth government did so with a requirement or expectation that the payments be used to provide a corresponding reduction in the price of water to users, regardless of the capacity of users to pay. In this regard, the Authority's research indicates that the focus of the Commonwealth (and the State for that matter) was on funding the scheme and its resultant regional development, and that pricing was not considered. In support of this, the Authority notes the comments of the Commonwealth Government Department of Agriculture, Fisheries and Forestry (22 August 2002) that, at the relevant time, the general intention of Commonwealth funding was to provide financial assistance for water resource projects and that pricing policies were a matter for the Queensland Government.

In summary, the Authority considers that the situation with respect to Commonwealth funding was as follows:

- there was a desire to proceed with the Burdekin Scheme because of its perceived economic benefits, including regional benefits;
- the size of the project was such that the Queensland Government did not have the capacity to fully fund the project or to fully assume the financing risk, particularly given then current water pricing policies and the then capacity of users to pay the full cost of construction;
- to enable the project to proceed, the Commonwealth provided funds to the Queensland Government to reduce its funding and financing risks;
- the issue of pricing was left to the Queensland Government to determine;
- in accordance with then current water pricing practices, the Queensland Government set prices at less than full cost; and
- the Commonwealth was most likely aware of this situation and may well have supported the Queensland Government's approach. However, this is not the same as saying that the Commonwealth intended that, regardless of capacity to pay, no user, current or future, should ever have to pay a price for water which included a return on the funding provided by the Commonwealth.

Since the Scheme was developed, in the interests of more efficient resource allocation, the State has moved to more cost reflective and commercial pricing, including water pricing. This commenced before COAG but was reinforced by COAG and national competition policy reform. Water is not the only area affected by this development nor is it immune from it.

In respect of COAG full cost recovery principles, the Authority notes that all jurisdictions have committed to the achievement of a positive real rate of return on the written down replacement cost of rural water assets, wherever practicable. There is no suggestion that pre 1994 assets should be valued at zero for pricing purposes regardless of the circumstances.

So far as the approaches adopted by other States are concerned, the Authority is aware that Tasmania does consider that Government investment in infrastructure is a sunk cost for pricing purposes and that few, if any, states have achieved a rate of return on capital on rural schemes at this time. For example, in setting prices for rural water assets, IPART has not incorporated a rate of return on pre-1994 assets. However, for urban water service providers IPART does incorporate pre-1994 assets in the asset base by imputing a value from the revenue stream at a particular point in time. In addition, the Authority is aware that the pricing policies of Victoria, Western Australia and South Australia do not preclude the recovery of pre 1994 capital cost if considered appropriate in the circumstances.

It should also be noted that, while the Authority considers that the Commonwealth funding is not a capital contribution, it has not been asked to advise on what the appropriate level of return should be in the current circumstances. In this regard, the Authority has recognised that there are a range of circumstances under which it may not be appropriate to charge a full (or even partial) rate of return (see chapter 7 of the Draft Report), of which capacity to pay is a key one. Furthermore, the Authority has indicated that, in the current circumstances, Burdekin users do not have the capacity to pay a rate of return on any government funding, including the Commonwealth funding.

#### **4. Other BRIAC Comments**

##### *Government Funding Sourced from Taxation*

###### BRIAC Comment

BRIAC have submitted that government funding to the Scheme that was sourced from taxes should be presumed to be a capital contribution to result in lower prices for users, unless proven otherwise. BRIAC stated that it is economically irrational to seek a rate of return on taxpayer funded assets, as taxes are involuntary and not a form of equity raising on capital markets. They state that the cost of capital for funds sourced through taxes is zero and governments should only seek a return of actual interest costs on debt funds.

###### QCA Analysis

The Authority's views on the Commonwealth Government's intentions are outlined above.

The mix of government funding provided to the Burdekin Scheme was determined by the relative availability of the various sources of funding at the time. No evidence is available that the government intended that specific funding sources such as taxes be treated differently for pricing purposes.

Regardless, taxpayer funds are not costless as their application to one purpose deprives the taxpayer of the opportunity to invest those funds elsewhere. The involuntary nature of taxes does not reduce this cost to the taxpayer.

Further, under the requirements of competitive neutrality, market distortions should be avoided and any special advantages or disadvantages due to public ownership should be removed, minimised or made apparent. To view taxpayer funds as costless per se would result in market distortions between competing rural water schemes depending on their funding mix.

### *Grower Contributions*

#### BRIAC Comment

BRIAC have stated that, if the Commonwealth and State were prepared to fund the scheme while indicating to growers that their payments were capital contributions, that circumstance was a sufficient indication that growers would not be charged a rate of return on that part of the cost which was taxpayer funded (p. 8).

BRIAC also state that the explicit statements made by Government in relation to grower contributions indicate that these payments were meant to delineate the extent of cost recovery from irrigators (p. 10).

#### QCA Analysis

The Authority does not agree that any conclusions about the Government's intentions regarding the treatment of government payments can reasonably be drawn from the fact that it proposed to treat grower payments as capital contributions. None of the Government statements in relation to grower contributions indicate that a rate of return will never be charged on the government funding for the Scheme (see Draft Position Paper Number 2).

### *Prevalent Pricing Practices*

#### BRIAC Comment

BRIAC have stated that, as Government did not seek commercial cost recovery at the time the Commonwealth funding was provided, it can be imputed that the funding was a capital contribution. Moreover, they state that, as prices did not change following the development of the Scheme, this is further evidence that full cost recovery was not required (p. 10).

#### QCA Analysis

Whilst the Government did not seek a commercial rate of return at the time the Commonwealth funding was provided, there was a consistent pattern of advice regarding the Queensland Government's intention to move to commercial pricing practices from around the time of the commencement of the auctions in the Burdekin Scheme (Position Paper Number. 2).

In addition, nothing precludes the Government from now seeking a rate of return on capital.

### *Cost Recovery for other Government Expenditures*

#### BRIAC Comment

BRIAC have submitted that there should be no difference in Government charging mechanisms for bridges, roads, electricity infrastructure and irrigation schemes. They state that it is arbitrary to say that taxpayer funds spent one way 'owe' a rate of return to government while taxpayer funds spent another way do not - just as arbitrary as it would now be for a government to go back and charge interest to past recipients of unemployment benefits or age pensions.

#### QCA Analysis

It is a matter of government policy how it funds its various infrastructure projects and whether it seeks to recover its costs from users of the infrastructure or from taxpayers generally. In this regard, full cost recovery (including a rate of return) is sought from the users of a variety of government infrastructure, including coal rail lines, electricity generation, distribution and transmission systems, some port infrastructure and some roads and bridges (toll roads and bridges). Users also pay fully for a variety of government recurrent services.

#### *Taxation Approaches*

##### BRIAC Comment

BRIAC have stated that taxation laws do not allow deductions to be claimed on expenditure recouped through other means, require that grants be treated as revenue, and a gifted asset has no cost base for depreciation purposes.

##### QCA Analysis

Taxation approaches to deductions and depreciation do not limit the Authority's approach for pricing purposes. Moreover, taxation laws do not provide any restrictions on the pricing of goods and services. For example, taxation laws would not prohibit an individual or entity from seeking to charge a rate of return on non-repayable and non-interest bearing funds given to them by another party (including the government) in order to fund a business.

#### *Vertical Fiscal Imbalance*

##### BRIAC Comment

In response to comments made by SunWater that Commonwealth funding was provided as a result of vertical fiscal imbalance between the Commonwealth and the States, BRIAC have stated that vertical fiscal imbalance is not relevant to the consideration of whether the Commonwealth grant is a capital contribution.

##### QCA Analysis

The Authority's treatment of Commonwealth funding is in no way related to the issue of vertical fiscal imbalance.

#### *Industry Commission Report*

##### BRIAC Comment

BRIAC has stated that the Industry Commission accepted in its 1992 report that the Commonwealth had written off the Commonwealth grant to the Scheme. The BRIAC stated that 'It would be rather silly if it had not, since what other accounting treatment is possible for a non-repayable grant?' (p. 9). In its submission in response to the Authority's Draft Report, BRIAC also queried whether the Authority had properly represented the Commission's view.

##### QCA Analysis

The Authority notes that a 1990 report by the Queensland Department of Primary Industries investigated whether the State should invest further funds in the Scheme. The report did not

include capital expenditure incurred prior to 1989/90 in its financial analysis (p. 31), as it represented an assessment of whether future investment should be incurred.

The 1992 report by the Industry Commission, and referred to by BRIAC, examined the above 1990 financial analysis and noted that it did not include past costs, including past Commonwealth funding provided to the Scheme.

In its Draft Report (p. 29), the Authority noted that the Commission did not sanction writing off the Commonwealth contribution or accept that it had been written off for pricing purposes. Indeed, the Commission criticised the State Government's contention that the Commonwealth grant would be recovered through many benefits of the development. The Commission stated that

In the Commission's view, this sort of reasoning has been used for too long to discount the cost to the community of poorly performing investments... To now argue that the Commonwealth's investment has not been written off because there will be broad community benefits from the project, is to ignore the likelihood that funds invested in more productive ways would have generated even greater benefits from the wider community. (p. 224).

In its report, the Commission recommended that:

Prices for irrigation water supplied from existing bulk water system should at least cover irrigators' share of the costs of operating and maintaining those systems, including dams and storages. For systems where demand for water is sufficiently strong, *a return on capital should also be sought...* (emphasis added).

Irrigators' share of the full costs of refurbishments to existing bulk water supply systems, including a minimum 5 per cent real return on capital, should be factored into bulk water charges... for an interim period, prices charged to irrigators may need to be subsidised... (p13).

## 5. Statutory Declarations

### *Stakeholder Comments*

Parties involved in the negotiations surrounding the Scheme made statutory declarations to the effect that the Commonwealth Government never stated that a rate of return would be required in relation to the Commonwealth grant:

- Ross Noel Chapman (former Manager of the Burdekin District CANEGROWERS Executive from 1973 to 1989 and Secretary of the Committee responsible for the lobbying and negotiations for the construction of the Burdekin Dam during the period 1976 to 1981) submitted that, based on his involvement at the time, the Federal Government did not expect a return on capital. Its decision was based on political considerations strengthened by the support and involvement of the city of Townsville;
- Lyndsay George Russell Hall (who held the following positions from 1970 to around 1993: Chairman of the Queensland Rice Marketing Board; Chairman of the Lower Burdekin Rice Producers Co-operative; Chairman of the Queensland Council of Agriculture; Chairman of the Queensland Farmers Federation and Member of the Burdekin Dam Project Advisory Group) submitted that the Federal Government never sought a rate of return on its investment, justifying spending tax-payers' money on the basis that the development would produce its own returns by providing export earnings, greater employment and benefits to downstream industries;

- Leslie John Searle (former Chairman of the Burdekin District CANEGROWERS Executive from 1982 to 1992 and Executive Representative on the Burdekin Dam Project Advisory Committee from 1976 to the completion of the Dam) submitted that the Dam was constructed by grant funds from the Commonwealth Government ‘on the anticipation of the Australian Tax Payer being reimbursed by income to the Government by the extra crops that would be grown in the area.’;
- all of the above individuals, and John Lawson Wassmuth (former Chairman of Invicta Mill Supplier’s Committee and a member of the Burdekin District CANEGROWERS Executive from 1977 to 1987 and a member of the Planning and Inspection Committee set up to administer the new land being developed as part of the Scheme from 1984 to 1999), submitted that at no time during their involvement with Government representatives was it mentioned that a rate of return on capital would be required from users.

In a statutory declaration attached to the BRIAC submission, James Timothy Smith (former regional engineer for the Department of Natural Resources and Mines in Ayr from 1984 to 1991) submitted that the State Government’s financial target for the Burdekin Scheme from the late 1970s into the late 1980s, was that the State would seek a direct return of about 30 per cent of its capital cost through land and water allocation sales. Mr Smith stated that this policy was well communicated, not only locally but also to the broader community.

#### *QCA Analysis*

The Authority accepts that the Commonwealth provided the funds to the State as a non-repayable grant and that it did not expect the State to repay these funds to it. However, this does not preclude the State Government from seeking a rate of return on these funds. Indeed, in the absence of any specific requirements to the contrary, the nature of the funding was such that the only restriction on its use was that it be expended on the construction of the Burdekin Dam.

In respect of claims that the Commonwealth expected to receive its returns through indirect benefits, the Authority has noted that it may be an effective and appropriate course of action to promote activities which benefit the public interest. However, as the funds were provided to the State, it is open to the State to apply those funds on terms considered most appropriate by the State, even though the funds were provided by the Commonwealth for the specific purpose of constructing the Burdekin dam.

The Authority acknowledges that statements indicating these broad consequences were consistently stated by both State and Commonwealth Governments. However, none of these statements indicated that, due to these indirect effects (or any other reason), a rate of return would never be sought on Government funding to the Scheme.

Furthermore, as noted in the Authority’s Draft Report, flow on or ‘multiplier’ effects do not necessarily equate to increases in economic welfare as multipliers do not address the question of whether benefits of increased activity in one area outweigh the costs, or evaluate the economic merits of other investment options. The 1980 Report to Parliament stated that such benefits did not represent a net benefit to the State (as quoted on p. 100 of the Authority’s Draft Report).

Despite the assistance of relevant agencies, the Authority has been unable to identify any relevant documentation to support Mr Smith’s statements.

## 6. Mareeba Dimbulah Scheme

### *Stakeholder Comments*

The Mareeba Dimbulah Customer Council (MDCC) submitted that Government funding provided to the Mareeba-Dimbulah Scheme was envisaged as a capital contribution in a 1952 report to Parliament:

... it is also proposed that the interest and redemption charges on the capital cost of the works shall be met from consolidated revenue and not charged to the Irrigation Area Trust Fund...

... experience with large irrigation schemes in other States has shown that it is necessary for the Government to meet all annual charges other than those with respect to maintenance, operation and administration...

... it is not possible in any large irrigation project to meet all annual charges from direct revenues. Charges for water and drainage must be fixed at rates that farmers can reasonably be expected to meet...

...direct revenue from the Mareeba-Dimbulah Project will be sufficient to make some contribution towards capital charges but it is considered essential that the remainder of such charges be met by the State or State and Commonwealth together, both of which will receive a substantial indirect return from the Project (as quoted in pp. 2-3 of the MDCC submission).

The MDCC stated their belief that the position adopted by Government in their Scheme was representative of most, if not all, irrigation schemes in the State (p. 4).

### *QCA Analysis*

As noted in the individual responses to each stakeholder, the Authority is required to limit its assessment of capital contributions to the circumstances of the Burdekin Scheme.

## 7. CANEGROWERS

### *Necessary Funding*

CANEGROWERS stated that Government payments made in the past were a capital contribution as without this the project would not go ahead.

### *QCA Analysis*

The Authority accepts that Government funding from all sources was required for the Scheme to go ahead. However, this does not imply that the Queensland Government decided to forego ever achieving a rate of return on any particular source of funding. The Authority has found no evidence to this effect.

### *Gift to Irrigators*

Alternatively, CANEGROWERS stated that Government payments made in the past were a gift from government to irrigators.

QCA Analysis

There is no evidence that government funding was a gift from government to irrigators. The issue of the intentions of the Commonwealth and the State regarding their funding has been considered above.

#### *Risk Reduction*

Alternatively, CANEGROWERS stated that Government payments made in the past were payments to reduce the risk of the dam so that it was commercially attractive (p. 1).

QCA Analysis

Whether this was the case or not, it has no implications for the issue of how to treat the payments for pricing purposes.

#### *Historical Perspective*

Further, CANEGROWERS stated that the Authority was taking an unrealistically hard line in applying its criteria for recognition as a capital contribution. In relation to Government funding, they stated that historical reasons for government capital injections in irrigation developments have been non-commercial in nature, including decentralised development, social issues and the like. Commercial returns on investment did not appear to be a major consideration (p. 3).

QCA Analysis

Historical reasons for Government investments in other irrigation developments are considered relevant but not binding forever.

The Authority recognises that a more commercial approach to pricing has evolved over time. The ability of Government to make and change policy is outlined in Position Paper no. 2.

#### *Commonwealth Intentions*

CANEGROWERS also stated that if the Commonwealth had been asked whether it intended the State Government to earn a rate of return on the grant, it would have replied to the contrary.

QCA Analysis

The Authority's views on the Commonwealth Government's intentions are outlined in its comments on BRIAC's submissions.

## **8. Water Charges for the Townsville Thuringowa Water Board**

#### *Press Articles*

The Authority has found media reports that during the 1980s it was envisaged that the Townsville Thuringowa Water Board would connect the Ross River Dam with the Burdekin Scheme via a pipeline in order to increase urban water reliability. Pricing of the water provided by the Scheme was a matter of public debate.

In particular, a 1987 article in the Townsville Daily Bulletin reported that the Minister for Water Resources, Mr Martin Tenni, had revealed that the Townsville Thuringowa Water Board would

be charged '\$35 a megalitre in headworks charges for water sourced from the Scheme which included payment for the dam'.<sup>1</sup> The article reported that the (then) Deputy Premier of Queensland, Mr Bill Gunn, stated that 'there was 'no way' residents of Townsville and Thuringowa would be asked to pay for the federally-funded Burdekin Dam wall'.

### *QCA Analysis*

The Authority has also identified media reports that the Queensland Government decided not to charge urban users for the Commonwealth funding for the Burdekin Falls Dam. Nevertheless, the Authority also notes that urban users have paid this charge since 1994. Accordingly, reliance solely on media reports does not provide a suitable basis for reaching appropriate conclusions.

In any case, it is difficult to draw any useful inferences from this material regarding the charges that were to apply to irrigators.

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<sup>1</sup> Editorial. 1987. Water price debate rages. *Townsville Bulletin*. May 30:3.

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