

Water licence review 2019

Draft decision

1 October 2019

Economic Regulation Authority

WESTERN AUSTRALIA

D203889[v3]

Invitation to make submissions

Submissions are due by 4:00 pm WST, Wednesday, 23 October 2019

The ERA invites comment on this draft decision and encourages all interested parties to provide comment on the matters discussed in this draft decision and any other issues or concerns not already raised in this draft decision.

We would prefer to receive your comments via our online submission form <https://www.erawa.com.au/consultation>

You can also send comments through:

Email: publicsubmissions@erawa.com.au
Post: PO Box 8469, PERTH BC WA 6849

Please note that submissions provided electronically do not need to be provided separately in hard copy.

All submissions will be made available on our website unless arrangements are made in advance between the author and the ERA. This is because it is preferable that all submissions be publicly available to facilitate an informed and transparent consultative process. Parties wishing to submit confidential information are requested to contact us at info@erawa.com.au.

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Executive summary

The Economic Regulation Authority is the Western Australian regulator for electricity, gas and water services licences.

The ERA regularly reviews the licences it administers to ensure they remain effective. The last review of water licences took place in 2016.

The current review is limited to the format and terms and conditions of the water licence template. The review does not cover the water licensing framework, which is the responsibility of the Minister for Water, or the *Water Services Code of Conduct (Customer Service Standards) 2018*.¹

The current licence templates have only undergone minor changes since they were first developed in 2013. Licensees have rarely needed to apply for amendments to the generic licence templates.

The ERA published an issues paper in April 2019 seeking public comment on proposed amendments to the licence template.² The ERA received six submissions in response.

The ERA considered the submissions and now proposes several additional amendments to the licence template beyond those raised in the issues paper. This draft decision summarises the proposed amendments. Stakeholders are invited to comment on the proposed amendments and any other matter within the scope of the review.

Substantive amendments proposed to the licence template

The draft decision includes 20 recommendations for amendments to the licence template. Three of the recommendations are substantive; the introduction of a new memorandum of understanding for sewerage services, the retention of the existing performance standards and the amendment of the water contract provisions.

Memorandum of Understanding for sewerage services

The Department of Health suggested that licensees that provide sewerage services should be required to enter into a Memorandum of Understanding (MoU) with the department. Currently only providers of potable water have to enter into a MoU with the department.

According to the department, this obligation would assist the department to manage public health risks that may result from the operation of sewerage services.

The ERA agrees with the department and proposes to amend clause 6.1 [now 7.1] so a licensee must enter into an MoU for the provision of sewerage services if required by the department.³

The administrative cost for smaller licensees is likely to be minimal, as the department has indicated in its submission that it anticipates deferring the requirement to have an MoU for smaller licensees.

¹ The water licensing framework consists of the *Water Services Act 2012* and the *Water Services Regulations 2013*.

² [Economic Regulation Authority, 2019, Issues Paper – Water Licence Review 2019](#)

³ Clause 7.1.2 of the licence template provides “after the commencement date or as otherwise agreed with the Department of Health”.

Performance standards

In the issues paper, the ERA proposed to remove the performance standards from Schedule 2 of the licence template. The ERA considered that setting performance standards for licensees was a policy matter for Government, not the regulator.

The Department of Water and Environmental Regulation (DWER) did not support the proposed removal of the performance standards. According to DWER, the proposed removal constituted a policy decision by the ERA that would reduce protections for customers.

In its submission, DWER advised that it intended to consider, as part of the review of the *Water Services Act 2012*, whether Government should make regulations or codes on performance standards.

The ERA has considered DWER's submission. Although the ERA is still of the view that setting performance standards should be a policy matter for Government, the ERA proposes to retain the performance standards in Schedule 2 until DWER has completed its review of the Act.

Contract provisions

In the issues paper, the ERA proposed to remove the contract provisions, clauses 5.1 to 5.3, from the licence template. Clause 5.1 and 5.3 give the ERA an approval role for customer contracts and non-standard agreements. Clause 5.2 allows the ERA to prescribe standard terms and conditions in the licence. Removing the ERA's approval role for non-standard agreements would mean that licensees and customers could no longer contract out of the Water Code or licence, including the performance standards set out in the licence.

The ERA considered that, in the absence of an express statutory authority, the licence template should not give the ERA an approval role for customer contracts or non-standard agreements. The ERA also considered that prescribing terms and conditions of service was a policy matter for Government, not the regulator.

DWER did not support the proposed removal of the contract provisions. According to DWER, it was important for customers to be able to contract out of the performance standards with their service provider. DWER also considered that the current licence template provided a transparent onus on licensees to align their contracts with the Act.

The ERA has considered DWER's submission and does not agree that customers should be able to contract out of the performance standards. Most customers have little or no market power and are unable to negotiate the terms and conditions of their supply. The ERA considers that customer interests are better served by removing the ability for licensees to obtain the ERA's approval to contract out of the Water Code and licence, including the performance standards.⁴

The ERA also does not agree that the current licence template provides a transparent onus on licensees to align their contracts with the Act. Neither the licence template nor the Act provide any guidance on the matters that should be addressed in a customer contract or standard terms and conditions. The Act and *Water Services Regulations 2013* also do not provide for a statutory framework that specifies the basis on which the ERA should approve or not approve a customer contract.

The ERA therefore proposes to proceed with the removal of clauses 5.1 and 5.3.

⁴ Non-residential customers will continue to be able to contract out of the Water Code under clause 5.1 of the Water Code.

The ERA proposes to retain clause 5.2, in a modified format, until DWER has completed its review of the Act. Amended clause 5.2 will allow the ERA to direct a licensee to amend a standard term or condition if the ERA considers the term or condition is no longer in the public interest. The ERA will also be able to direct a licensee to amend a term or condition in accordance with a term proposed by the ERA.

Summary of Recommendations

Recommendation 1

Amend clause 6.1 [now 7.1] as follows:

~~6.7~~ **PUBLIC HEALTH**

~~6.4.7.1~~ **Memorandum of understanding**

~~6.4.1.7.1.1~~ Where the *licensee* ~~is, or intends to,~~ provides *potable water*, the *licensee* must enter into an *MoU as described in this clause 7.1* with the *Department of Health* as soon as practicable after the *commencement date* or as otherwise agreed with the *Department of Health*.

~~7.1.2~~ *Where the licensee provides sewerage services, the licensee must enter into an MoU as described in this clause 7.1 with the Department of Health as soon as practicable after the commencement date or as otherwise agreed with the Department of Health.*

~~7.1.3~~ *For the avoidance of doubt, if the licensee provides both potable water and sewerage services, the licensee must enter into a separate MoU with the Department of Health in respect of each of the potable water and the sewerage service.*

~~6.4.2.7.1.4~~ **The** *An MoU* must:

- (a) specify that the *MoU* is a legally binding document between the *licensee* and *Department of Health*; and
- (b) ~~requiring~~ *require* an audit by the *Department of Health* on compliance by the *licensee* with its obligations under the *MoU* at least once every three years, or other such time as notified by the *Department of Health*, and the provision of the *audit report* to the *ERA*.

~~6.4.3.7.1.5~~ The *licensee* must comply with the terms of ~~the~~ *an MoU*.

~~6.4.4.7.1.6~~ The *licensee* must *publish*, in a form agreed with the *Department of Health*, ~~the~~ *an MoU* and any amendments to the *MoU* on the *licensee's* website within one month of entering into the *MoU* or of making amendments to the *MoU*.

~~6.4.5.7.1.7~~ The *licensee* must *publish* the *audit report* on the *licensee's* website within one month of the completion of the report.

~~6.4.6.7.1.8~~ The *licensee* must *publish, in a form agreed with the Department of Health*, any other reports required by the *Department of Health* or ~~set out in the~~ *required by an MoU* on the *licensee's* website, ~~quarterly or~~ at a reporting frequency specified by the *Department of Health*.

Recommendation 2

Amend clause 7.1.1 [now 1.1.1] as follows:

audit report means a signed, written document that presents the purpose, scope and results of the audit by the *Department of Health* on compliance by the *licensee* of its obligations under ~~the~~ *an MoU, pursuant to clause 7.1.4 of this licence*.

MoU means ~~the~~ *a* memorandum of understanding referred to in clause ~~6.4.7.1~~ as amended or replaced from time to time.

Recommendation 3

Amend Schedule 3, clause 1.1 as follows:

1.1 Requirement for approved financial hardship policy

~~1.1.1 Where the licensee intends to supply water services to customers other than non-residential customers or members of the licensee, the licensee must notify the ERA and must have an approved financial hardship policy in accordance with clause 26 of the Code of Conduct prior to any such supply.~~

If the licensee at any time during the term of the licence:

(a) intends to supply water supply services (but only in respect of the supply of drinking water) or sewerage services to residential customers; and

(b) does not have a financial hardship policy approved by the ERA,

the licensee must submit a draft financial hardship policy to the ERA for approval.

1.1.2 The licensee must not commence the supply of water supply services (but in respect of the supply of drinking water only) or sewerage services to residential customers unless the ERA has approved the licensee's draft financial hardship policy.

~~1.1.2 For the purposes of clause 1.1, a water service does not include non-potable water supply services, except where the non-potable water supply service is supplied on the basis that the customer is responsible for treating the water to make it fit for humans to drink.~~

1.1.3 For the purposes of clause 1.1 of this Schedule, 'drinking water' has the meaning given to that term in clause 4(1) of the Code of Conduct.

Recommendation 4

Include the following definition in clause 7.1.1 [now 1.1.1]:

Australian Drinking Water Guidelines means the Australian Drinking Water Guidelines Paper 6 National Water Quality Management Strategy (version 3.5) published by the National Health and Medical Research Council, as amended or replaced from time to time.

Recommendation 5

Delete the definition for "Department of Water" from clause 7.1.1 [now 1.1.1].

Recommendation 6

Retain the performance standards in Schedule 2 of the licence template.

Recommendation 7

Delete clause 5.3.

Recommendation 8

Delete the definition of "amendment date" from clause 7.1.1 [now 1.1.1].

Recommendation 9

Delete clause 5.1.

Recommendation 10

Delete the definitions of "customer contract" and "Customer Contract Guidelines" from clause 7.1.1 [now 1.1.1].

Recommendation 11

Amend clause 5.2 [now 6.1] as follows:

~~5.2~~ **6.1 Standard terms and conditions of service**
[Section 71 of the Act]

~~5.2.1~~ Subject to:

~~(a) the Act; and~~

~~(b) the terms of a customer contract (if any) that apply to the water service, the terms and conditions of service in this licence that apply to the water service are set out in Schedule 4.~~

~~5.2.2~~ The terms in Schedule 4 may be supplemented by terms published from time to time by the licensee on the licensee's website or as otherwise prescribed.

6.2.1 If, during the term of the *licence*, the *ERA* considers that one or more of a *licensee's standard terms and conditions of service* is no longer in the public interest, the *ERA* may direct the *licensee*:

(a) to amend:

(i) the *standard term or condition of service*;

or

(b) the *standard term or condition of service* in accordance with a term proposed by the *ERA*; and

(b) to do so within a specified period.

6.2.2 The *licensee* must comply with a direction given to the *licensee* under this clause.

Recommendation 12

Include the following definition in clause 7.1.1 [now 1.1.1]:

standard terms and conditions of service has the meaning given to that term in section 71(1) of the Act.

Recommendation 13

Amend Schedule 2, clause 5.1.3 of Harvey Water's licence as follows:

Table 4: Irrigation service standards

Water source	Irrigation water quality	Percentage of customers given 5 days' notice of a planned interruption
<u>All water sources other than Wellington Dam</u>	<1,200 mg/L TDS	>90
<u>Wellington Dam</u>	<1,400 mg/L TDS	>90

Recommendation 14

Amend Schedule 2, clause 4.1.2 of the licence template as follows:

4.1 Drainage service standards

4.1.2 Urban drainage scheme infrastructure provided by the licensee for the purpose of protection against flooding shall be designed, constructed, operated and maintained such that the peak flows of stormwater runoff from

rainfall events can be accepted into and will not overflow from the system in accordance with the following standard.

Drainage service standard

	How is it measured	Performance indicator / targets
Drainage – Design of new urban infrastructure.	Desk audit of scheme to test if Design of new urban drainage scheme infrastructure protects against flooding from peak flows of stormwater runoff from rainfall events with intensities up to – Residential – 5 year average recurrence interval Commercial – 10 year average recurrence interval.	100% of schemes audited comply with the standard.

Recommendation 15

Amend Schedule 2, clause 6.1 of the Water Corporation’s licence as follows:

6. Farmland Areas Water System Standards

- 6.1 In cases where services are provided by agreement to farms the licensee must provide annual notifications to customers of the conditions under which the service is supplied as detailed in the following table.

Service standard	How is it measured	Performance indicator / targets
Annual notification of conditions of service.	Audit of sample areas for Farmlands water services where services are provided by agreement and customers are notified of the conditions under which services supplied.	In the preceding <u>every</u> twelve month period 95% of customers receiving these services were notified of the conditions under which water was supplied.

Recommendation 16

Delete clause 3.3.1(a) [now 4.3.1(a)] from all water licences other than the licences of the three water corporations.

Recommendation 17

Delete clause 5.4

Recommendation 18

Delete the definition of “Financial Hardship Policy Guidelines” from clause 7.1.1 [now 1.1.1].

Recommendation 19

Amend Schedule 2, clause 1.2 as follows:

1.2.1 The *licensee* must notify:

- (a) new *customers* upon purchase of the affected property as soon as practicable; and

(b) existing *customers* at least annually

~~if the~~ ~~that~~ pressure and flow of the water supplied to the customer's premises falls outside of the standard pressure and flow range set out in ~~section~~ clause 1.1 of this *Schedule*.

1.2.2 The notification ~~set out~~ in ~~section 1.2.2~~ clause 1.2.1 must advise the customer whether the pressure and flow of water supplied to the customer's premises will be lower or higher than the pressure and flow range set out in clause 1.1 of the Schedule. ~~include:~~

~~(a) — the pressure and flow range; and~~

~~(b) — further information about how to manage the exempt pressure and flow.~~

Recommendation 20

Amend the licence template consistent with the amendments listed in Appendix 3 of this draft decision.

Decision

1. The ERA:
 - a. Proposes to approve the licence amendments in the water services licence template attached to this draft decision (Appendix 2).
 - b. Proposes to amend all existing water services licences consistent with the licence template, in accordance with section 17 of the *Water Services Act 2012*.
 - c. Proposes to amend Schedule 2, clause 5.1.3 of Harvey Water's licence consistent with Recommendation 13 of this draft decision, in accordance with section 17 of the Act.
 - d. Is satisfied that the proposed amendments would not be contrary to the public interest, in accordance with section 17(1) of the Act and taking into consideration the matters set out in section 46 of the Act. The ERA has also considered the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003*.⁵

Background

2. The *Water Services Act 2012* requires participants in the water industry who intend to, or currently, provide water supply, sewerage, irrigation or drainage services to hold a water licence issued by the ERA (unless otherwise exempt).
3. The ERA currently administers 21 water licences.
4. The ERA periodically reviews water licences to ensure that it maintains a best practice licensing regime. The ERA commenced this water licence review in April 2019. This is the second review of water licences since the Act came into effect in November 2013. The first review was conducted in 2016.
5. The objectives of this review are to ensure that water licences:
 - are consistent with applicable legislation⁶
 - minimise licensees' regulatory burden and compliance costs
 - have clear and consistent terms and conditions
 - are consistent with electricity and gas licences, where possible.
6. The scope of the review is to examine:
 - the format of the water licence template
 - the terms and conditions applicable to the water licence template.
7. The review does not examine:
 - water legislation, including subsidiary legislation
 - processes and procedures contained in the ERA's guidelines for licensees
 - licence amendment proposals specific to an individual licensee

⁵ The full text of section 26(1) is in Appendix 4.

⁶ Applicable legislation includes the Act and its codes and regulations.

- licence exemptions.
8. The ERA may amend the water licences:
 - if satisfied that it would not be contrary to the public interest to do so.⁷
 9. When determining whether amending the water licences would be contrary to the public interest, the ERA must take the following matters into account:
 - to the extent to which the [ERA] considers that they are relevant to the particular case:
 - (a) environmental considerations, including the value of ecologically sustainable development;
 - (b) public health considerations relating to the provision of reliable water services.⁸
 10. The ERA must also have regard to:
 - (a) the need to promote regulatory outcomes that are in the public interest;
 - (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
 - (c) the need to encourage investment in relevant markets;
 - (d) the legitimate business interests of investors and service providers in relevant markets;
 - (e) the need to promote competitive and fair market conduct;
 - (f) the need to prevent abuse of monopoly or market power;
 - (g) the need to promote transparent decision-making processes that involve public consultation.⁹

Review process

11. On 24 April 2019, the ERA published an issues paper detailing its proposed amendments to the water licence template and seeking public comment.^{10 11}
12. The ERA received submissions from six stakeholders:
 - A stakeholder who wished to remain anonymous (Stakeholder A)¹²
 - Bunbury Water Corporation (Aqwest)
 - Busselton Water Corporation
 - Department of Health
 - Department of Water and Environmental Regulation (DWER)
 - Water Corporation.

The submissions are available on the [ERA website](#).

⁷ *Water Services Act 2012* (WA) s17(1). The full text of section 17(1) is in Appendix 4.

⁸ *Water Services Act 2012* (WA) s46. The full text of section 46 is in Appendix 4.

⁹ *Economic Regulation Authority Act 2003* (WA) s26(1). The full text of section 26 is in Appendix 4.

¹⁰ [Economic Regulation Authority, 2019, Issues Paper – Water Licence Review 2019](#)

¹¹ Licensees provided the ERA with suggested amendments and issues for inclusion in the issues paper.

¹² The stakeholder was a member of the public who requested that their name be withheld for privacy reasons.

13. Aqwest, Busselton Water Corporation and the Water Corporation supported the ERA's proposed amendments.
14. Stakeholder A and the Department of Health suggested additional amendments to the licence template.
15. DWER did not support some of the proposed amendments.

Reasons

16. The ERA has considered the submissions and proposes the following licence amendments.

Submission from Stakeholder A

17. Stakeholder A was concerned about the accessibility of some water meters. Restricted access to water meters may affect persons who need access to the meter, such as plumbers and contractors.
18. The *Water Services Regulations 2013* require the owner or occupier of land to maintain a clear space around a water meter and ensure easy and safe access at all times.¹³ If a licensee is satisfied that a person has failed to comply with this requirement, the licensee may give a compliance notice to the person.¹⁴
19. Stakeholder A recommended that this requirement be better enforced. According to Stakeholder A, the Water Corporation "continues to defend owners breaching access and install meters against regulations."
20. The ERA proposes not to amend the licence template to address Stakeholder A's concerns. The regulations give licensees a discretionary power to issue a compliance notice to persons who have failed to maintain a clear space around the meter or failed to ensure easy and safe access. The ERA cannot override the regulations by including an obligation in the licence that requires licensees to issue a compliance notice in these cases.

Submission from the Department of Health

21. The Department of Health supported the water licence review process set out in the issues paper and suggested several additional amendments.

Memorandum of Understanding for sewerage services

22. The department proposed that the ERA require licensees that provide sewerage services to enter into a Memorandum of Understanding (MoU) with the department. The department said that such an obligation would assist it "in managing public health risks associated with the operation of sewerage services."¹⁵

¹³ *Water Services Regulations 2013* (WA) r24(1). The full text of regulation 24(1) is in Appendix 4.

¹⁴ *Water Services Regulations 2013* (WA) r24(3). The full text of regulation 24(3) is in Appendix 4.

¹⁵ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, cover page and pp. 1-2 of the attachment.

23. The ERA sought additional information from the department about the purpose of an MoU for sewerage services.
24. The department explained that it already had an MoU for wastewater services and groundwater replenishment with the Water Corporation. This agreement had formalised the regulatory and governance framework of the Water Corporation's wastewater products. The department would like to extend this framework to other licensed sewerage service providers.
25. The department was of the view that, as the number of licences for sewerage services had increased, there was a need for a more standard approach to manage and regulate sewerage schemes.
26. According to the department, an MoU for sewerage services would ensure that wastewater outcomes of licensed sewerage providers met health, environmental and social expectations. The MoU would incorporate the "12 Element Framework" of the *Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (Phase 1)*.¹⁶ It would set standards for wastewater quality, risk management, catchment protection, reporting and incident management, and use a risk approach to wastewater management.
27. The department suggested that the new obligation could operate like clause 6.1 of the current licence (see Appendix 1), which obliged licensees providing potable water services to enter into an MoU with the department and comply with its terms. The MoU prescribes protocols for licensees to monitor their drinking water systems and report the results to the department. The department undertakes an audit of the licensee's compliance with its obligations under the MoU at least once every three years, unless the department notifies the licensee otherwise. The audit report must be provided to the ERA.
28. The ERA proposes to amend the licence template as suggested by the department.
29. The ERA is satisfied that the proposed amendment would not be contrary to the public interest. Although it will impose an administrative cost on licensees, the ERA considers that the benefits will outweigh the costs, having regard to:
 - a. The need to promote regulatory outcomes that are in the public interest.¹⁷
 - b. The long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.¹⁸
30. The administrative cost is likely to be minimal for smaller licensees, as the department indicated in its submission that it anticipated deferring the requirement to have a MoU for smaller licensees.
31. The ERA proposes the following amendments to clause 6.1 [now 7.1]:¹⁹

¹⁶ More information about the '12 Element Framework' is available in the Department of Health (WA)'s [Guidelines for the Non-potable Uses of Recycled Water in Western Australia](#) (2011).

¹⁷ *Economic Regulation Authority Act 2003* (WA) s26(1)(a). The full text of section 26(1)(a) is in Appendix 4.

¹⁸ *Economic Regulation Authority Act 2003* (WA) s26(1)(b). The full text of section 26(1)(b) is in Appendix 4.

¹⁹ The drafting includes amendments proposed in the issues paper and Appendix 2 of this draft decision.

6.1.1 Memoranda of Understanding

~~6.1.1~~ 7.1.1 Where the licensee ~~is, or intends to,~~ provides²⁰ potable water, the licensee must enter into an MoU as described in this clause 7.1 with the Department of Health as soon as practicable after the commencement date or as otherwise agreed with the Department of Health.

7.1.2 Where the licensee provides sewerage services, the licensee must enter into an MoU as described in this clause 7.1 with the Department of Health as soon as practicable after the commencement date or as otherwise agreed with the Department of Health.

7.1.3 For the avoidance of doubt, if the licensee provides both potable water and sewerage services, the licensee must enter into a separate MoU with the Department of Health in respect of each of the potable water and the sewerage service.

~~6.1.2~~7.1.4 The MoU must:

[...]

32. The ERA also proposes the following amendment to the definition of 'MoU' in clause 7.1.1 [now 1.1.1]:

MoU means ~~the~~ a memorandum of understanding referred to in clause ~~6.1.1~~ 7.1 as amended or replaced from time to time.

Memorandum of Understanding for potable water supply services

[Clause 6 of the current licence template]

33. The department suggested various amendments to the wording of clause 6 [now 7]. Most of the proposed amendments clarified the department's current processes for MoUs.

Clause heading

34. The department requested to change the general heading for clause 7 from "Health" to "Public Health" to better align with the department's focus on public health under the *Public Health Act 2016*.²¹
35. The ERA is satisfied that the proposed amendment would not be contrary to the public interest.
36. The ERA proposes the following amendment to clause 6 [now 7]:

~~6.1.~~ PUBLIC HEALTH

Commencement of MoU

37. The department advised that it usually only entered into an MoU after the licensee commenced the supply of potable water. The department suggested that this be reflected in clause 7.1.1 by replacing the words "where the licensee is, or intends to," with "where the licensee provides".²²

²⁰ Paragraphs 37 to 40 of this draft decision provide more information about the proposed amendment ("is, or intends to, provides").

²¹ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, p. 5 of the attachment.

²² Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, p. 1 of the attachment.

38. The ERA is satisfied that the proposed amendment would not be contrary to the public interest. It simply reflects the department's current processes.
39. The ERA proposes the following amendments to clause 6.1.1 [now 7.1.1]:
- ~~6~~7.1.1 Where the *licensee* ~~is, or intends to,~~ provides ...
40. The ERA proposes to use the same drafting for the additional clauses dealing with MoUs for sewerage services.

Audits for potable (drinking) water

41. The department pointed out that the current licence template contemplated two kinds of audits:
- An operational audit that assessed the effectiveness of the measures taken by the licensee to meet the quality and performance standards under the licence. This audit was conducted by an independent expert and administered by the ERA.
 - An audit on the compliance of the licensee with its obligations under the MoU. This audit was undertaken by the department.
42. The department recommended that, to maintain clarity in terminology, the following explanatory note should be included in clause 6.1 [now 7.1]:²³
- For the avoidance of doubt, an audit under a Memorandum of Understanding between the Department of Health and the licensee for drinking water is not the operational audit referred to in section 4.3 of the Operating Licence.
43. The department also recommended that the definition of "audit report", in clause 7.1 [now 1.1], should be amended by including the words "pursuant to section 7.1.2 of this licence".
44. The ERA does not propose to insert an explanatory note in clause 6.1 [now 7.1]. The definitions of "audit report" and "operational audit", as well as the wording of clauses 4.3 and 6.1.2(b) [now 5.3 and 7.1.4(b)], make it sufficiently clear what is meant with an audit report and an operational audit.
45. The ERA proposes to amend the definition of "audit report" as suggested by the department, except that "section 7.1.2" will be replaced with "clause 7.1.4".
46. The ERA is satisfied that the proposed amendment would not be contrary to the public interest. It simply clarifies the current definition.
47. The ERA proposes the following amendments to clause 7.1.1 [now 1.1.1]:
- audit report** means a signed, written document that presents the purpose, scope and results of the audit by the *Department of Health* on compliance by the *licensee* of its obligations under ~~the~~ an MoU, pursuant to clause 7.1.4 of this licence.

Requirement to report

48. Clause 6.1.6 [now 7.1.8] of the licence template requires a licensee to publish "any other reports required by the Department of Health or set out in the MoU on the licensee's website quarterly or at a reporting frequency specified by the Department of Health".

²³ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, p. 2 of the attachment.

49. The department explained that, although it may require a licensee to publish a report, its MoUs did not set out the reports it may require from a licensee. The department suggested to delete the words “set out” from clause 6.1.6 [now 7.1.8].²⁴
50. The department also suggested:²⁵
- To remove the word “quarterly” from clause 6.1.6 [now 7.1.8]. The clause would still require the licensee to publish the report at a reporting frequency specified by the department.
 - To add the words “and in a form agreed with the Department of Health” to clause 6.1.6 [now 7.1.8]. The proposed amendment would allow the department to agree that operationally sensitive information does not have to be published.
 - To replace the words “the MoU” are replaced with “an MoU” to allow for licensees who have entered into more than one MoU with the department.
51. The ERA is satisfied that the proposed amendments would not be contrary to the public interest. They simply reflect the department’s current processes.
52. The ERA proposes the following amendments to clause 6.1.6 [now 7.1.8]:
- ~~6.1.6~~7.1.8 The *licensee* must publish, in a form agreed with the *Department of Health*, any other reports required by the *Department of Health* or ~~set out in the~~ required by an MoU on the *licensee’s* website ~~quarterly or~~ at a reporting frequency specified by the *Department of Health*.

Recommendation 1

Amend clause 6.1 [now 7.1] as follows

~~6.7~~ 7.1 PUBLIC HEALTH

~~6.1.7~~7.1.1 Memorandum of understanding

~~6.1.1~~7.1.1 Where the *licensee* ~~is, or intends to,~~ provides potable water, the *licensee* must enter into an MoU as described in this clause 7.1 with the *Department of Health* as soon as practicable after the *commencement date* or as otherwise agreed with the *Department of Health*.

7.1.2 Where the *licensee* provides *sewerage services*, the *licensee* must enter into an MoU as described in this clause 7.1 with the *Department of Health* as soon as practicable after the *commencement date* or as otherwise agreed with the *Department of Health*.

7.1.3 For the avoidance of doubt, if the *licensee* provides both *potable water* and *sewerage services*, the *licensee* must enter into a separate MoU with the *Department of Health* in respect of each of the *potable water* and the *sewerage service*.

~~6.1.2~~7.1.4 ~~The~~An MoU must:

- (a) specify that the MoU is a legally binding document between the *licensee* and *Department of Health*; and

²⁴ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, p. 3 of the attachment.

²⁵ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, p. 3 of the attachment.

- (b) ~~requiring~~ require an audit by the *Department of Health* on compliance by the *licensee* with its obligations under the *MoU* at least once every three years, or other such time as notified by the *Department of Health*, and the provision of the *audit report* to the *ERA*.

~~6.4.3~~7.1.5 The *licensee* must comply with the terms of ~~the~~ an *MoU*.

~~6.4.4~~7.1.6 The *licensee* must *publish*, in a form agreed with the *Department of Health*, ~~the~~ an *MoU* and any amendments to the *MoU* on the *licensee's* website within one month of entering into the *MoU* or of making amendments to the *MoU*.

~~6.4.5~~7.1.7 The *licensee* must *publish* the *audit report* on the *licensee's* website within one month of the completion of the report.

~~6.4.6~~7.1.8 The *licensee* must *publish*, in a form agreed with the *Department of Health*, any other reports required by the *Department of Health* or ~~set out in the~~ required by an *MoU* on the *licensee's* website, ~~quarterly or~~ at a reporting frequency specified by the *Department of Health*.

Recommendation 2

Amend clause 7.1.1 [now 1.1.1] as follows:

audit report means a signed, written document that presents the purpose, scope and results of the audit by the *Department of Health* on compliance by the *licensee* of its obligations under ~~the~~ a *MoU*, pursuant to clause 7.1.4 of this licence.

MoU means ~~the~~ a memorandum of understanding referred to in clause ~~6.4.7.1~~ as amended or replaced from time to time.

Financial hardship policy for non-potable water supply services

[Schedule 3, clause 1.1 of the current licence template]

53. Licensees that do not have a financial hardship policy but intend to supply water services to residential customers must submit a financial hardship policy for the ERA's approval before they commence supplying customers.²⁶
54. Schedule 3, clause 1.1.2 of the licence provides that a financial hardship policy is not required for non-potable water supply services – except where the non-potable water supply service is supplied on the basis that the customer is responsible for treating the water to make it fit for humans to drink.
55. The department questioned whether the exclusion of certain types of non-potable water services only applied to the obligation to submit a financial hardship policy, or to the licence generally.²⁷
56. The department also observed that licensees that supplied customers non-potable water services on the basis that they were responsible for treating the water to make it fit to drink, were currently not obliged to inform their customers of that responsibility. They also did not have to advise the ERA if they supplied a water service on that basis.

²⁶ Schedule 3, clause 1.1.1 of the current licence template.

²⁷ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, pp. 3-4 of the attachment.

57. The department considered this to be a significant oversight in customer communication obligations. The department recommended that the licence should be amended to clarify that customers were not responsible for treating non-potable water.

Regulatory background

58. Schedule 3, clause 1.1 was inserted into the licence template following the 2016 water licence review.
59. The discussion paper for that review said:²⁸

[...] One of the obligations now imposed on water licensees by the Code of Conduct²⁹ is to have in place a written policy in relation to financial hardship that is approved by the ERA.

All licensees must have a hardship policy unless they only supply:

- water services to non-residential customers;³⁰
- water services to the licensee's members (e.g. an irrigation co-operative);³¹ or
- non-potable water supply services that involve the supply of water to a customer on the basis that it will not be treated to make it fit for humans to drink.³²

Where a water licence application includes the supply of a water service that requires a financial hardship policy, the applicant is required to submit its proposed financial hardship policy to the ERA for approval in conjunction with the licence application. There is, however, no requirement for an existing water licensee to notify the ERA if the licensee commences providing a water service that requires the licensee to have an approved financial hardship policy in place.

To ensure that a financial hardship policy is submitted to, and approved by, the ERA in these circumstances, it is proposed that for licences where the clause requiring the licensee to have a hardship policy is marked "Not used", an additional clause be inserted in Schedule 3. The additional clause will stipulate that the licensee must notify the ERA that they intend to supply water services subject to a financial hardship policy, and have an approved policy in place prior to commencing supply.

60. At the time, the department expressed similar concerns. It questioned the wording used in the licence and noted that it was not aware of any service "that so clearly places an onus on the customer to do something as a result of a type of water service, as opposed to an onus on the supplier to provide the customer with suitable advice."
61. The ERA decided to maintain the proposed drafting as it considered that the wording:
- clearly relates the requirements for financial hardship policies and uses the relevant definition of 'drinking water' used in the Water Code (clause 4(2)(a)) dealing with requirements for financial hardship policy.³³

²⁸ [Economic Regulation Authority, 2016, Discussion Paper – Water Licence Review 2016](#), pp. 13-14.

²⁹ *Water Services Code of Conduct (Customer Service Standards) 2013 (WA)*.

³⁰ The definition of 'financial hardship' included in Part 4 of the Water Code (2013) is limited to water services supplied in respect of the place used solely or primarily as the customer's dwelling. Those who supply to both residential and non-residential customers must have a hardship policy.

³¹ Section 3(1) of the Act defines a 'customer' as a person to whom water services are provided by the licensee or whom is entitled to the provision of water services by the licensee, other than a person who is a member of the licensee.

³² Clause 4(2) of the Water Code provides that, in relation to water supply services, the Water Code only applies to licensees who provide this service in respect of the supply of drinking water.

³³ [Economic Regulation Authority, 2016, Decision - Water Licence Review 2016](#), paragraph 85.

Responsibility for treating non-potable water

62. The ERA does not propose to amend the licence to clarify that customers are not responsible for treating non-potable water to make it fit for humans to drink.
63. The ERA agrees with the department that customers should not be made responsible for treating the water to make it fit to drink. However, as explained in the ERA's 2016 decision, the wording included in the licence is consistent with the definition of "drinking water" in the *Water Services Code of Conduct (Customer Service Standards)*.³⁴ The licence cannot be inconsistent with the provisions of the Water Code.
64. The ERA will consider the definition of "drinking water", including the reference to the customer being "responsible for" the treatment of non-potable water, during the next review of the Water Code.³⁵

Clarifying the intent of Schedule 3, clause 1.1

65. As explained in the 2016 water licence review decision, the ERA considers that Schedule 3, clause 1.1.2 clearly applies to the financial hardship policy obligations set out in Schedule 3, clause 1.1.1.
66. The department's concerns may, partly, have arisen from an error in the licence template attached to the issues paper. The licence template incorrectly referred to clause 2.1, instead of clause 1.1 (of Schedule 3). As there is no clause 2.1 in Schedule 3, the clause inadvertently appears to relate to clause 2.1 in the main body of the licence template.
67. The ERA proposes several amendments to Schedule 3, clause 1.1 that are also likely to address the department's comments about the intent of Schedule 3, clause 1. The proposed amendments follow changes made to the Water Code in 2018.
68. In 2018, the ERA limited the application of the Water Code to licensees that provide a drinking water supply service or sewerage service. Previously, the Water Code also applied to licensees that provided an irrigation or drainage service. As a result, licensees that provide irrigation or drainage services no longer have to have a financial hardship policy.
69. Schedule 3, clause 1.1 still requires licensees that provide irrigation and drainage services to notify the ERA, and have an approved financial hardship policy, if they intend to provide a service to residential customers. The ERA proposes to limit the application of Schedule 3, clause 1.1 to licensees that are covered by the Water Code by:
 - Replacing the term "water services", in Schedule 3, clause 1.1.1, with "water supply services (but only in respect of the supply of drinking water) or sewerage services".
 - Defining the term "drinking water" by reference to the definition used in the Water Code.
70. The ERA also proposes to replace "customers other than non-residential customers or members of the licensee" with "residential customers" to clarify the application of the clause.

³⁴ *Water Services Code of Conduct (Customer Service Standards) 2018 (WA)* cl 4(1). The full text of clause 4(1) is in Appendix 4.

³⁵ The ERA is responsible for making, amending and replacing the Water Code under section 27 of the Act.

71. The ERA is satisfied that the proposed amendments would not be contrary to the public interest. They will provide regulatory certainty by removing the current inconsistency between the licence and the Water Code.

Recommendation 3

Amend Schedule 3, clause 1.1 as follows:

- 1.1 Requirement for approved financial hardship policy**
- 1.1.1 ~~Where the licensee intends to supply water services to customers other than non-residential customers or members of the licensee, the licensee must notify the ERA and must have an approved financial hardship policy in accordance with clause 26 of the Code of Conduct prior to any such supply.~~
- If the licensee at any time during the term of the licence:
- (a) intends to supply water supply services (but only in respect of the supply of drinking water) or sewerage services to residential customers; and
- (b) does not have a financial hardship policy approved by the ERA,
the licensee must submit a draft financial hardship policy to the ERA for approval.
- 1.1.2 The licensee must not commence the supply of water supply services (but in respect of the supply of drinking water only) or sewerage services to residential customers unless the ERA has approved the licensee's draft financial hardship policy.
- ~~1.1.2 — For the purposes of clause 1.1, a water service does not include non-potable water supply services, except where the non-potable water supply service is supplied on the basis that the customer is responsible for treating the water to make it fit for humans to drink.~~
- 1.1.3 For the purposes of clause 1.1 of this Schedule, 'drinking water' has the meaning given to that term in clause 4(1) of the Code of Conduct.

Australian Drinking Water Guidelines

[clause 7.1 of the current licence template]

72. The department recommended that the term “Australian Drinking Water Guidelines”, used in the definition of “potable water”, is cited in a footnote.³⁶
73. The ERA supports the department’s recommendation but proposes to define the term rather than cite it in a footnote.
74. The ERA is satisfied that the proposed amendment would not be contrary to the public interest.

³⁶ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, p. 3 of the attachment.

Recommendation 4

Include the following definition in clause 7.1.1 [now 1.1.1]:

Australian Drinking Water Guidelines means the Australian Drinking Water Guidelines Paper 6 National Water Quality Management Strategy (version 3.5) published by the National Health and Medical Research Council, as amended or replaced from time to time.

Definition of “Department of Water”

[clause 7.1 of the current licence template]

75. The department recommended that the definition for “Department of Water” is removed from the licence template as the term is not used in the licence template.³⁷
76. The ERA agrees and proposes to remove the definition for “Department of Water” from clause 7.1.1 [now 1.1.1].

Recommendation 5

Delete the definition of “Department of Water” from clause 7.1.1 [now 1.1.1].

Performance standards

[clause 4.2 and Schedule 2 of the current licence template]

77. The department commented on the ERA’s proposal to remove the performance standards from Schedule 2.³⁸
78. Paragraphs 80 to 88 of this draft decision explain the ERA’s proposals to address the submissions on performance standards.

Submission from DWER

79. DWER did not support the ERA’s proposal to remove the performance standards and contract provisions from the water licence template. DWER did support the other, administrative amendments proposed in the issues paper.

Performance standards

[Schedule 2 of the current licence template]

80. DWER did not support the proposal to remove performance standards from the water licence template. According to DWER:

A key purpose of the *Water Services Act 2012* is the protection of water service customers. Performance standards help to maintain high standards of service by establishing clear obligations on water service providers. The current performance standards were set by government when water service licenses were issued under the

³⁷ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, pp. 4-5 of the attachment.

³⁸ Department of Health, 2019, Submission to *Issues Paper – Water Licence Review 2019*, p. 5 of the attachment.

Water Services Licensing Act 1995 and transitioned through transitional provisions when the *Water Services Act 2012* was passed. It was a decision by Government to continue to include the performance standards in the water services licences rather than repealing the licenses or moving the performance standards to regulations. By removing the performance standards from the licence template, in the absence of separate regulations to replace the licence obligations, the Economic Regulation Authority would be making a policy decision that would reduce protections for water service customers.

81. The ERA acknowledges that the performance standards were initially set by Government when the licences were first issued under the *Water Services Licensing Act 1995* and transitioned through transitional provisions when the Act passed. However, when the Act commenced operation, responsibility for the water licensing regime transferred from Government to the ERA.
82. The ERA amended the licences on the day the Act took effect. The amendments included removing several performance standards and changes to most of the remaining performance standards. Prior to making the amendments, the ERA invited public comment. The ERA did not receive any comments from the Department of Health or the then Department of Water about the proposed changes to the performance standards.
83. As Government did not object to the removal and amendment of performance standards in 2013, the ERA questions whether there was “a decision by Government to continue to include the performance standards in the water services licences” as stated by DWER.
84. The Government also did not include an express requirement in the Act for the ERA to impose performance standards on licensees. The Act only provides a discretionary power to the ERA to deal with performance standards in the licence.
85. The Act and Regulations do not provide any guidance on performance standards, such as for which water services standards should be set and what those standards should be. This is different from other utility industries, such as electricity, where Government has prescribed performance standards for licensees in regulations and codes.³⁹
86. The ERA continues to hold the view that setting performance standards is a policy matter for Government, not the regulator.
87. The ERA welcomes DWER’s intention to consider, as part of the current review of the Act, whether Government should make regulations or codes on performance standards.
88. The ERA has considered the matters raised by DWER and proposes to retain the performance standards in Schedule 2 until the review of the Act is complete.

Recommendation 6

Retain the performance standards in Schedule 2 of the licence template.

³⁹ For example, regulation 243 of the *Electricity Regulations 1947* requires that the voltage on the neutral conductor of a consumer’s installation must be below 6 volts AC. Section 5, together with section 6, of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* prescribes voltage fluctuation standards for transmitters and distributors. The full text of regulation 243 of the *Electricity Regulations 1947* and sections 5 and 6 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* are in Appendix 4.

Contract provisions

[Clauses 5.1 to 5.3 of the current licence template]

89. DWER did not support the proposal to remove the contract provisions from the water licence template. DWER said:

It is important for customers to have the capacity to agree contracts that vary from the established performance standards. The current framework for regulation of service contracts is supported by Government.

The *Water Services Act 2012* contains provisions for licences to be subject to conditions (section 12), including in relation to standard terms and conditions for the provision of water services, standard customer contracts and non-standard customer agreements and contracts. The current licence template (clauses 5.1 and 5.2) provides a transparent onus on licensees to align their contracts with the Act. The Authority can develop guidelines on customer contracts in consultation with stakeholders. The removal of the contract provisions from the licence template by the Authority would be a policy decision that would reduce protections for customers.

Background

90. As explained in the issues paper, the licence template includes three clauses about customer contracts and terms and conditions of services (together described as “water contracts”):⁴⁰
- Clause 5.1 deals with customer contracts. It provides that a licensee must, if directed by the ERA, submit a draft customer contract for the ERA’s approval.
 - Clause 5.2 addresses standard terms and conditions of services. It allows the ERA to specify, in the licence, the terms and conditions under which a licensee must provide a water service.
 - Clause 5.3 deals with non-standard terms and conditions of service. It allows licensees and customers to agree to terms and conditions that deviate from the licence or the Water Code. The terms and conditions must be approved by the ERA before they commence, unless they are exempt.
91. The Act itself does not provide a comprehensive legislative framework for water contracts. It includes some references to contracts, including an obligation for licence applicants to inform the ERA of their contracts, but it does not prescribe minimum standards for contracts or set out a role for the ERA to determine the content of contracts.⁴¹ This is different from the contract provisions in the *Electricity Industry Act 2004* and the *Energy Coordination Act 1994* (together the Energy Acts).
92. The Energy Acts include detailed provisions for energy contracts for small use customers.⁴² For example, all energy licensees that sell energy to small use customers must have a standard form contract that has been approved by the ERA. Regulations made under the Energy Acts prescribe the matters that must be addressed in a standard form contract.⁴³

⁴⁰ [Economic Regulation Authority, 2019, Issues Paper – Water Licence Review 2019](#), p. 8

⁴¹ *Water Services Act 2012* (WA) s10(2)(b)(iv), 10(2)(b)(v), 12(1)(d), 12(1)(e), 12(1)(f), 71(1), 73(2)(a), 74 and 75. The full text of these sections is in Appendix 4.

⁴² A small use customer is a customer who consumes less than 160 Megawatt hours of electricity, or less than 1 Terajoule of gas, per year. Small use customers are typically residential and small business customers.

⁴³ *Electricity Industry (Customer Contracts) Regulations 2005, Energy Coordination (Customer Contracts) Regulations 2004*.

93. The legislative framework for energy contracts guides the ERA when:
- monitoring a licensee's compliance with the conditions of its licence
 - reviewing and approving energy contracts.
94. The lack of a comprehensive framework for water contracts in the Act led the ERA to include clauses 5.1 to 5.3 in the licence template in 2013.

Proposal to delete clauses 5.1 and 5.3 of the licence template

95. In the issues paper the ERA proposed to delete clauses 5.1 to 5.3 from the licence template.⁴⁴
96. The ERA explained that:
- Neither the Act, nor the regulations made under the Act, give the ERA an express statutory authority to approve contracts. The *Economic Regulation Authority Act 2004* (WA), which sets out the ERA's functions and powers, also does not give the ERA an express statutory authority to approve contracts.
97. The ERA considered that, in the absence of a statutory approval role, the licence template should not provide the ERA with an approval role for water contracts. The ERA therefore proposed to delete clauses 5.1 and 5.3, which currently provide the ERA with such an approval role.
98. The ERA considered that deleting clauses 5.1 and 5.3 was unlikely to materially affect licensees and their customers. Firstly, the ERA has not approved any customer contracts under clause 5.1 since the clause took effect. Secondly, deleting clause 5.3 would be in customers' interest as it would preclude licensees and customers from contracting out of the protections of the licence and the Water Code.
99. The ERA recognised that deleting clause 5.3 could affect licensees who supply water services outside of the performance standards prescribed in the licence. These licensees would no longer be able to contract out of the performance standards. The ERA commented that the number of customers who currently receive a supply that does not meet the performance standards is not known, as there is some uncertainty about the way the Water Corporation reports on these contracts.
100. The ERA concluded that the deletion of clause 5.3 was unlikely to affect licensees as the ERA proposed to remove the performance standards from Schedule 2 of the licence template. Removal of the performance standards meant there would no longer be a need for licensees to contract out of the standards.

Proposal to delete clause 5.2 of the licence template

101. In the issues paper, the ERA also proposed to delete clause 5.2 which allowed the ERA to prescribe standards terms and conditions of service in the licence.⁴⁵
102. The ERA considered that prescribing terms and conditions of service was a policy matter for Government, not the regulator.

⁴⁴ [Economic Regulation Authority, 2019, Issues Paper – Water Licence Review 2019](#), proposal 2.

⁴⁵ Id.

103. The ERA considered that deleting clause 5.2 was unlikely to materially affect licensees and their customers as, at that time, the ERA had not specified any terms or conditions under clause 5.2.

Consideration of DWER's submission

104. The ERA has considered the matters raised in DWER's submission.

Contracts that vary the performance standards

[clause 5.3 of the current licence template]

105. In its submission, DWER said that it was "important for customers to have the capacity to agree contracts that vary from the established performance standards."
106. However, the ERA considers most customers do not have the capacity to agree contracts that vary from the performance standards prescribed in the licence template. Most customers have little or no market power: they either agree to the revised performance standards or they do not receive a water supply. Customer interests would be better served if licensees could no longer seek the ERA's approval for contracts that exclude, modify or vary the requirements of the Water Code and licence, including the performance standards.⁴⁶

Contracting out of the Water Code

107. Removing the ERA's approval role for contracts that vary the requirements of the Water Code would be consistent with the intent of clause 5(1) of the Water Code.
108. Upon advice by the Water Code Consultative Committee, the ERA amended clause 5(1) of the Water Code in 2018 so licensees and residential customers can no longer contract out of the Water Code. The ERA should not be able to override this protection by approving contracts between licensees and residential customers that contract out of the Water Code.
109. Equally, the ERA should not have an approval role for contracts between licensees and business customers as clause 5(1) of the Water Code expressly allows these customers to contract out of the Water Code.

Contracting out of the licence, including the performance standards

110. Allowing licensees and customers to contract out of the licence may undermine the effectiveness of the licence. The electricity and gas licences do not allow licensees and customers to contract out of the terms and conditions set out in the licence.⁴⁷
111. Some licensees have reported having contracts that vary the performance standards set out in the licence. For 2017/18, the Water Corporation reported 12,326 agreements that did not meet the requirements of the licence.⁴⁸

⁴⁶ Clause 5(1) of the Water Code allows licensees and non-residential customers to contract out of the Water Code. The deletion of clause 5.3 from the licence template will not affect the operation of clause 5(1) of the Water Code. Non-residential customers will continue to be able to contract out of the Water Code. The full text of clause 5(1) of the Water Code is in Appendix 4.

⁴⁷ There is one exception: gas licensees may contract out of some of the provisions included in Schedule 2 of their licence (the *Compendium of Gas Customer Licence Obligations*). The relevant provisions are listed in clause 1.4 of the Compendium.

⁴⁸ Water Corporation, 2018, [Services Provided by Agreement report](#), (online) [accessed 20 August 2019]

112. The ERA sought further information from the Water Corporation about the reported agreements. The information provided confirmed that none of the agreements applied to the performance standards set out in the licence. The agreements were entered into when the Water Corporation proposed to supply a customer on terms and conditions that were different from its own standard terms and conditions.

113. The ERA considers that there is no need for the Water Corporation to contract out of the performance standards prescribed in Schedule 2 of the licence template:

- **Potable water systems and drainage schemes (Schedule 2, clause 1.1 and 4.1):** The performance standards for potable water systems and drainage schemes are about the design and operation of these systems and schemes; they do not regulate the provision of services to individual customers.

Because the performance standards are not about the level of service provided to individual customers but about the design of the system, the Water Corporation cannot contract out of the standards by agreeing with individual customers that they do not apply.^{49 50}

- **Irrigation service standards (Schedule 2, clause 5.1):** The performance standards for irrigation services do not explicitly state whether they apply to the design of the irrigation system or the level of service provided to customers. They simply require licensees to supply water that is suitable for irrigation purposes and complies with the standards and principles as set out in the licence.

The Water Corporation's latest operational audit confirmed that the Water Corporation meets the requirements of the licence.⁵¹

As the Water Corporation is meeting the standards for irrigation services, there is no need for the Water Corporation to contract out of these standards with individual customers.

- **Farmland areas water system standards:** The cost of designing, constructing, operating and maintaining water service works in accordance with the standards set out in Schedule 2, clause 1.1 can be prohibitive in some areas of the State. Schedule 2, clause 6 recognises this by prescribing different performance standards for customers connected to the Farmlands Water Systems.

The Water Corporation's annual performance report for 2017/18 stated that only two out of 5795 farmlands customers received a service that did not meet the requirements of Schedule 2, clause 6.2 of the licence.

⁴⁹ Some of the agreements reported by the Water Corporation relate to customers who are receiving a pressure or flow that is different from the pressure and flow standards set out in the licence. The ERA considers that, in these cases, the Water Corporation has not contracted out of the licence, but out of its own, internal standard terms and conditions.

⁵⁰ The 2018 operational audit of the Water Corporation's licence reported that the Water Corporation designed and operated its potable water systems and drainage schemes consistent with the standards set out in the licence. This does not mean that all customers received a water supply that met the pressure and flow standards set out in the licence. Some customers received a different pressure or flow due to the way the customer's supply address is connected to the mains (for example, close to a water storage tank) or because they connected to the water service works after the scheme was already designed and their supply address is located outside of the planned scheme (for example, a connection directly to a trunk main). However, as Schedule 2, clause 1.1 does not oblige the Water Corporation to ensure that each customer received pressure and flow against the standards set out in the licence, the Water Corporation did not breach the conditions of the licence.

⁵¹ The Water Corporation's annual performance report for 2017/18 also confirmed that the irrigation water supplied by the Water Corporation had a Total Dissolved Solids (TDS) level that is below the maximum level set out in the template licence.

114. Aqwest and Busselton Water previously advised they also contracted out of the performance standards for pressure and flow.^{52 53} As explained in paragraph 113, licensees cannot contract out of the performance standards with individual customers because the standards do not apply to the level of service provided to customers but to the design of the system. The agreements entered into by Aqwest and Busselton Water are therefore not agreements under clause 5.3 that “exclude, modify or restrict” the requirements of the licence.
115. The ERA understands that one licensee, Harvey Water, cannot meet the performance standards for irrigation services for all customers. Customers who receive water from the Wellington Dam regularly receive an irrigation service that does not meet the standards set out in the licence.
116. However, Harvey Water cannot use clause 5.3 to contract out of the performance standards because this clause only allows a licensee and a customer, as defined under the Act, to contract out of the licence. Most of Harvey Water’s customers are members of the licensee as it is a cooperative. These customers are specifically excluded from the Act’s definition of customer. As members are not considered customers for the purposes of clause 5.3, Harvey Water cannot contract out of the performance standards under clause 5.3.⁵⁴
117. To the ERA’s knowledge, there are no licensees who have entered into agreements under clause 5.3 of the licence, to exclude, modify or restrict the requirements of the licence or Water Code. Removal of clause 5.3 from the licence is therefore unlikely to affect licensees.
118. After consideration of DWER’s submission and the matters set out above, the ERA proposes to delete clause 5.3 from the licence template. The ERA also proposes to remove the definition of ‘amendment date’ from clause 7.1.1 [now 1.1.1] as this term is only used in clause 5.3.
119. The ERA remains of the view that, in the absence of an explicit statutory approval role, the licence template should not provide the ERA with an approval role for water contracts.
120. The ERA considers that the proposed amendment would not be contrary to the public interest. In proposing the amendment, the ERA has considered:
- The need to promote regulatory outcomes that are in the public interest.⁵⁵
 - The long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.⁵⁶

⁵² Aqwest and Busselton Water only provide water supply services (potable water). The only performances standards that apply to Aqwest and Busselton Water are therefore the pressure and flow standards of Schedule 2, clause 1.1.

⁵³ [Economic Regulation Authority, 2017, Draft Decision – 2016-17 Review of the Water Services Code of Conduct \(Customer Service Standards\) 2013](#), paragraph 43.

⁵⁴ The ERA proposes to amend the performance standards for irrigation water sourced from Wellington Dam. Refer to paragraphs 137 to 144.

⁵⁵ *Economic Regulation Authority Act 2003* (WA) s26(1)(a). The full text of section 26(1)(a) is in Appendix 4.

⁵⁶ *Economic Regulation Authority Act 2003* (WA) s26(1)(b). The full text of section 26(1)(b) is in Appendix 4.

121. The proposed amendment will benefit customers by ensuring they will always be entitled to the protections afforded by the licence and the Water Code.⁵⁷

Recommendation 7

Delete clause 5.3.

Recommendation 8

Delete the definition of 'amendment date' from clause 7.1.1 [now 1.1.1].

Customer contracts and standard terms and conditions of service

[clauses 5.1 and 5.2 of the current licence template]

122. DWER supported the current framework for customer contracts and standard terms and conditions as set out in the licence. DWER considered that the licence template provided a transparent onus on licensees to align their contracts with the Act. It also allowed the ERA to develop guidelines on customer contracts. DWER was concerned that the removal of the contract provisions from the licence template would reduce protections for customers.
123. The ERA disagrees that the current licence template provides a transparent onus on licensees to align their contracts with the Act. Neither the licence template nor the Act provide any guidance on the matters that should be addressed in a customer contract or standard terms and conditions. The Act and Regulations also do not provide for a statutory framework that specifies the basis on which the ERA should approve or not approve a customer contract.⁵⁸

Clause 5.1

124. The ERA considers that the licence template should not provide the ERA with an approval role for customer contracts when the Act and Regulations do not give the ERA this role.
125. The ERA welcomes DWER's intention to consider, as part of the review of the Act, whether Government should make regulations or codes on standard customer contracts.
126. Until DWER has completed this review, the ERA proposes to remove clause 5.1 from the licence. The ERA will reconsider the need for an approval role for customer contracts following the completion of the review.
127. To date, the ERA has not approved any customer contracts or made customer contract guidelines under clause 5.1. It is therefore unlikely that the proposed amendment will adversely affect licensees or customers.

⁵⁷ Under clause 5(1) of the Water Code, non-residential customers will continue to be able to contract out of the Code. The full text of clause 5(1) of the Water Code is in Appendix 4.

⁵⁸ For example, section 11WF(2) of the *Energy Coordination Act 1994* and section 51(2) of the *Electricity Industry Act 2004* provide that the ERA must not give an approval if it considers that the standard form contract:

- (a) will not meet the requirements of the regulations in respect of such contracts; or
- (b) will be inconsistent with —
 - (i) this Act or any other written law; or
 - (ii) any term, condition or provision of the licence concerned.

128. The ERA also proposes to remove the definitions of “customer contract” and “Customer Contract Guidelines” from clause 7.1.1 [now 1.1.1] as these terms are only used in clause 5.1.
129. Although the ERA will no longer have an approval role for customer contracts, the ERA will retain oversight of customer contracts through clause 5.2.⁵⁹

Clause 5.2

130. The ERA proposes to retain clause 5.2 (“standard terms and conditions of service”) [now clause 6.1] until DWER has completed its review of the Act.
131. Clause 5.2 currently allows the ERA to specify, in the licence, the terms and conditions under which a licensee must provide a water service.⁶⁰
132. The ERA proposes to amend clause 5.2 to clarify the ERA’s role in setting standard terms and conditions of service. Amended clause 5.2 will allow the ERA, if it considers that one or more of a licensee’s standard terms and conditions of service are no longer in the public interest, to direct the licensee to amend:⁶¹
- the standard term or condition of service
 - or
 - the standard term and condition of service in accordance with a term proposed by the ERA.
133. The ERA will also be able to specify a period within which the licensee must amend the term or condition. Failure to comply with a direction will result in a breach of the licence.
134. The ERA is satisfied that the proposed amendments would not be contrary to the public interest. The amendments provide regulatory certainty to licensees by clarifying the basis for any direction to amend a contract term or condition of service (“no longer in the public interest”) and provide protections for customers by allowing the ERA to intervene if one or more of the licensee’s terms and conditions are no longer in the public interest.
135. In proposing the amendments, the ERA has had regard to:
- The need to promote regulatory outcomes that are in the public interest.⁶²

⁵⁹ Clause 5.2 applies to ‘standard terms and conditions of service’ as defined in section 71(1) of the Act. The definition of ‘standard terms and conditions of service’ includes standard customer contracts:

- (a) the terms and conditions for the provision of the service **under a standard customer contract** [our emphasis] between the licensee and the person (if there is one); and
- (b) the standard terms and conditions for the provision of the service under the licence, to the extent to which the provision of the service is not covered by a standard customer contract; and
- (c) the standard terms and conditions for the provision of the service published from time to time by the licensee on the licensee’s website (or as otherwise prescribed), to the extent to which the provision of the service is not covered by standard terms and conditions under the licence or a standard customer contract;

⁶⁰ Clause 5.2 is currently blank in licences other than the licence template.

⁶¹ As part of a new licence application, the applicant must inform the ERA, for each class of water service that the applicant proposes to provide the standard terms and conditions for the provision of the service and the standard customer contracts (if any) for the provision of the service (sections 10(2)(b)(iv) and (v) of the Act). The ERA must grant a licence if satisfied that it would not be contrary to the public interest to do so (section 11(1)(b) of the Act). The ERA therefore has regard to the public interest when assessing the licensee’s standard terms and conditions and standard customer contracts (if any) as part of a licence application. In the absence of any guidance from the Act, the ERA proposes to apply the same test to standard terms and conditions that are in place during the term of the licence.

⁶² *Economic Regulation Authority Act 2003 (WA)* s26(1)(a). The full text of section 26(1)(a) is in Appendix 4.

- The long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.⁶³
- The need to promote competitive and fair market conduct.⁶⁴
- The need to prevent abuse of monopoly or market power.⁶⁵

136. The ERA also proposes to include the following definition of “standards terms and conditions of services” in clause 1.1 of the licence template:

standard terms and conditions of service has the meaning given to that term in section 71(1) of the Act.

Recommendation 9

Delete clause 5.1.

Recommendation 10

Delete the definitions of ‘customer contract’ and ‘Customer Contract Guidelines’ from clause 7.1.1 [now 1.1.1].

Recommendation 11

Amend clause 5.2 [now 6.1] as follows:

~~5.2~~ 6.1 Standard terms and conditions of service [Section 71 of the Act]

~~5.2.1~~ ~~Subject to:~~

~~(a) the Act; and~~

~~(b) the terms of a customer contract (if any) that apply to the water service;~~

~~the terms and conditions of service in this licence that apply to the water service are set out in Schedule 4.~~

~~5.2.2~~ ~~The terms in Schedule 4 may be supplemented by terms published from time to time by the licensee on the licensee’s website or as otherwise prescribed.~~

6.1.1 If, during the term of the licence, the ERA considers that one or more of a licensee’s standard terms and conditions of service is no longer in the public interest, the ERA may direct the licensee:

(a) to amend:

(i) the standard term or condition of service;

or

(ii) the standard term or condition of service in accordance with a term proposed by the ERA; and

(b) to do so within a specified period.

6.1.2 The licensee must comply with a direction given to the licensee under this clause.

⁶³ Economic Regulation Authority Act 2003 (WA) s26(1)(b). The full text of section 26(1)(b) is in Appendix 4.

⁶⁴ Economic Regulation Authority Act 2003 (WA) s26(1)(e). The full text of section 26(1)(e) is in Appendix 4.

⁶⁵ Economic Regulation Authority Act 2003 (WA) s26(1)(f). The full text of section 26(1)(f) is in Appendix 4.

Recommendation 12

Include the following definition in clause 7.1.1 [now 1.1.1]:

standard terms and conditions of service has the meaning given to that term in section 71(1) of the Act.

Additional amendments proposed by the ERA

Performance standards for irrigation services

[Schedule 2, clause 5.1.3 of the current licence template]

137. As explained in paragraph 115, Harvey Water is unable to meet the irrigation quality standards for water sourced from Wellington Dam. Over the past three years, the Total Dissolved Solids (TDS) level of the irrigation water sourced from Wellington Dam has consistently been above the level prescribed in the licence due to high salinity.⁶⁶
138. The ERA understands that Harvey Water has little control over the quality of the water supplied from the Wellington Dam.⁶⁷
139. Based on available information, the ERA considers that the current standard is unrealistic for water sourced from Wellington Dam. The standard results in Harvey Water continuously being in breach of its licence. Although Harvey Water could contract out of the standard with some of its customers, it is unable to do so with customers who are members of the co-operative. Theoretically, for Harvey Water to not be in breach of its licence, it would have to cease providing water to supply members when the TDS values are too high.
140. The ERA understands that Harvey Water's customers are aware that the salinity of water sourced from Wellington Dam is sometimes high. Harvey Water has advised that, even when salinity is high, customers are still willing to use the water.
141. The ERA considers that it is not in the interest of customers for Harvey Water to cease supplying them to avoid breaching its licence conditions. Similarly, it is not in the public interest for Harvey Water to continuously be in breach of its licence.
142. The licence already recognises that it may be appropriate to set different standards for different classes of customer. For example, Schedule 2, clause 1.1.1 prescribes different pressure and flow standards depending on the location of the water service works.
143. The ERA proposes to amend Schedule 2, clause 5.1.3 by requiring the quality of irrigation water sourced from Wellington Dam to have a TDS level of less than 1400 milligrams/litre, rather than 1200 milligrams/litre. The ERA is satisfied that the proposed amendment would not be contrary to the public interest. In proposing the amendments, the ERA has had regard to the need to promote competitive and fair market conduct.

⁶⁶ Most of the TDS is dissolved salt which increases the salinity of the water.

⁶⁷ The quality of the water is partially due to the amount of rain that has fallen in the area. At the end of winter, the water may meet the standard as the dam water would have been diluted with rainwater. At the end of summer, the salinity of the water will be high due to evaporation and limited rainfall.

144. The ERA proposes to retain the existing standards of Schedule 2, clause 5.1.3 for all irrigation licences except Harvey Water's.

Recommendation 13

Amend Schedule 2, clause 5.1.3 of Harvey Water's licence as follows:

[Table 4:](#) Irrigation service standards

Water source	Irrigation water quality	Percentage of customers given 5 days' notice of a planned interruption
All water sources other than Wellington Dam	<1,200 mg/L TDS	>90
Wellington Dam	<1,400 mg/L TDS	>90

Desk audits

[Schedule 2, clauses 4.1.2 and 6.1 of the current licence template]

145. Schedule 2, clauses 4.1.2 and 6.1 currently provide:

4.1 Drainage service standards

- 4.1.2 Urban drainage scheme infrastructure provided by the licensee for the purpose of protection against flooding shall be designed, constructed, operated and maintained such that the peak flows of stormwater runoff from rainfall events can be accepted into and will not overflow from the system in accordance with the following standard.

Drainage service standard

	How is it measured	Performance indicator / targets
Drainage – Design of new urban infrastructure.	Desk audit of scheme to test if design of new urban drainage scheme infrastructure protects against flooding from peak flows of stormwater runoff from rainfall events with intensities up to – Residential – 5 year average recurrence interval Commercial – 10 year average recurrence interval.	100% of schemes audited comply with the standard.

6. Farmland Areas Water System Standards

- 6.1 In cases where services are provided by agreement to farms the licensee must provide annual notifications to customers of the conditions under which the service is supplied as detailed in the following table.

Service standard	How is it measured	Performance indicator / targets
Annual notification of conditions of service.	Audit of sample areas for farmlands water services where services are provided by agreement and customers are notified of the conditions under which services supplied.	In the preceding twelve month period 95% of customers receiving these services were notified of the conditions under which water was supplied.

146. Schedule 2, clause 4.1.2 is included in the licence template and applies to the licences of Rottnest Island Authority and the Water Corporation. Schedule 2, clause 6.1 is specific to the Water Corporation's licence and not included in the licence template.
147. It is unclear from the wording of both clauses how often a desk audit must be undertaken and whether the results must be submitted to the ERA.
148. To date, the Water Corporation has audited the farmlands and drainage standards every year and submitted the results of the audits to the ERA. Rottnest Island Authority has never submitted the results of its audits to the ERA.
149. The ERA considers that there is little value in requiring licensees to undertake separate desk audits of drainage standards, and for the Water Corporation farmlands standards, as they must also be audited as part of the licensee's regular operational audit.
150. The ERA proposes to remove the requirement to undertake desk audits of farmlands and drainage standards from the licence template.
151. Removing the requirement for desk audits will only affect the audit process for the standards; not the standards themselves. Licensees must still comply with the standards at all times.
152. The ERA is satisfied that the proposed amendments would not be contrary to the public interest. In proposing the amendments, the ERA has had regard to the legitimate business interests of investors and service providers in relevant markets.⁶⁸

⁶⁸ *Economic Regulation Authority Act 2003 (WA)*, s26(1)(d).

Recommendation 14

Amend Schedule 2, clause 4.1.2 of the licence template as follows:

4.1 Drainage service standards

- 4.1.2 Urban drainage scheme infrastructure provided by the licensee for the purpose of protection against flooding shall be designed, constructed, operated and maintained such that the peak flows of stormwater runoff from rainfall events can be accepted into and will not overflow from the system in accordance with the following standard.

Drainage service standard

	How is it measured	Performance indicator / targets
Drainage – Design of new urban infrastructure.	Desk audit of scheme to test if Design of new urban drainage scheme infrastructure protects against flooding from peak flows of stormwater runoff from rainfall events with intensities up to – Residential – 5 year average recurrence interval Commercial – 10 year average recurrence interval.	100% of audited schemes comply with the standard.

Recommendation 15

Amend Schedule 2, clause 6.1 of the Water Corporation's licence as follows:

6. Farmland Areas Water System Standards

- 6.1 In cases where services are provided by agreement to farms the licensee must provide annual notifications to customers of the conditions under which the service is supplied as detailed in the following table.

Service standard	How is it measured	Performance indicator / targets
Annual notification of conditions of service.	Audit of sample areas for Farmlands water services where services are provided by agreement and customers are notified of the conditions under which services supplied.	In the preceding every twelve month period 95% of customers receiving these services were notified of the conditions under which water was supplied.

Amendments proposed in the issues paper

153. None of the submissions raised any objections to the other amendments proposed in the issues paper.

Provision of water services

[clause 3.3.1(a) of the current licence template]

154. In the issues paper, the ERA proposed to remove clause 3.3.1(a) [now 4.3.1(a)] from all water licences other than the three water corporations.⁶⁹
155. Clause 3.3.1(a), which is based on section 21 of the Act, requires licensees to provide the water service(s) authorised by the licence to persons entitled to the service(s) under the Act. A person “is entitled to the service under the Act” if they own land to which statutory water service charges apply. Statutory water service charges are charges set out in regulations
156. Currently, the only regulations that set out water service charges are the *Water Services (Water Corporations Charges) Regulations 2014*. These regulations apply to the Busselton Water Corporation, Aqwest and the Water Corporation. This means that the only persons entitled to a service under the Act are customers of the three water corporations.
157. As section 21 only applies to the three water corporations, the ERA proposed to remove clause 3.3.1(a) from all water licences other than the three water corporations.

Recommendation 16

Delete clause 3.3.1(a) [now 4.3.1(a)] from all water licences other than the licences of the three water corporations.

Hardship policy

[clause 5.4 of the current licence template]

158. In the issues paper, the ERA proposed to remove clause 5.4 and the definition of “Financial Hardship Policy Guidelines”, in clause 7.1.1 [now 1.1.1], from the licence template.⁷⁰
159. Clause 5.4 requires licensees to have a financial hardship policy and to comply with any financial hardship policy guidelines produced by the ERA.
160. During the 2016/17 review of the *Water Services Code of Conduct (Customer Service Standards) 2013*, the ERA proposed to move the obligation from the licence to the Code. Moving the obligation to the code would ensure that all obligations for financial hardship policies were included in the same place.
161. The obligation is now included in clause 29 of the Water Code. To reduce duplication, the ERA proposed to remove clause 5.4 from the licence template. The ERA also proposed to remove the definition of Financial Hardship Policy Guidelines as this term is only used in clause 5.4.
162. The ERA proposes to amend the licence template consistent with the amendments proposed in the issues paper.

⁶⁹ Proposal 1 of the [issues paper](#).

⁷⁰ Proposals 6 and 7 of the [issues paper](#).

Recommendation 17

Delete clause 5.4.

Recommendation 18

Delete the definition of “Financial Hardship Policy Guidelines” from clause 7.1.1 [now 1.1.1].

Notification of pressure and flow exemptions

[Schedule 2, clause 1.2 of the current licence template]

163. Schedule 2, clause 1.2 requires licensees to notify customers that receive a pressure or flow that falls outside of the standard pressure and flow set out in the licence. Notification must be provided to new customers as soon as practicable upon purchase of the affected property and to existing customers at least annually.
164. The notification must set out the pressure and flow range and provide further information about how to manage the exempt pressure and flow. Notification allows customers to take remedial action, for example install a pressure reducing valve or a pump.
165. Static pressure and flow are difficult to calculate and maintain as they are subject to peak demand and other operational matters (such as water storage tank levels).
166. In the issues paper, the ERA proposed to amend Schedule 2, clause 1.2 by replacing the requirement for licensees to advise customers of the “pressure and flow range” with a requirement to advise customers whether the pressure and flow of water supplied to their premises will be lower or higher than the applicable standard pressure and flow range set out in the licence.⁷¹ The ERA also proposed to transfer Schedule 2, clause 1.2 to Schedule 3.⁷²
167. The ERA proposes to amend Schedule 2, clause 1.2 of the licence template consistent with the amendments proposed in the issues paper, other than the proposed transfer of the clause to Schedule 3.
168. The ERA is satisfied that the proposed amendments would not be contrary to the public interest. The amendments ensure that licensees will no longer have to advise customers of the exact pressure and flow range they receive, but customers will still be advised if their supply is outside of the prescribed range – allowing them to take remedial action.
169. In proposing the amendments, the ERA has had regard to the need to promote competitive and fair market conduct.⁷³

⁷¹ [Economic Regulation Authority, 2019, Issues Paper – Water Licence Review 2019](#), proposal 5.

⁷² [Economic Regulation Authority, 2019, Issues Paper – Water Licence Review 2019](#), proposal 5. The amendment aimed to ensure that licensees would continue to have to inform their customers if the pressure and flow supplied falls outside of the ranges described in the licence after the pressure and flow standards were removed from Schedule 2. As the ERA no longer proposes to remove the performance standards from Schedule 2, there is no longer a need to transfer the notification requirements from Schedule 2 to Schedule 3.

⁷³ *Economic Regulation Authority Act 2003 (WA)* s26(1)(e).

Recommendation 19

Amend Schedule 2, clause 1.2 as follows:

- 1.2.1 The *licensee* must notify:
- (a) new *customers* upon purchase of the affected property as soon as practicable; and
 - (b) existing *customers* at least annually
- ~~if the that~~ pressure and flow of the water supplied to the customer's premises falls outside of the standard pressure and flow range set out in ~~section~~ clause 1.1 of this *Schedule*.
- 1.2.2 The notification ~~set out~~ in ~~section 1.2.2~~ clause 1.2.1 must advise the customer whether the pressure and flow of water supplied to the customer's premises will be lower or higher than the pressure and flow range set out in clause 1.1 of the Schedule. ~~include:~~
- ~~(a) — the pressure and flow range; and~~
 - ~~(b) — further information about how to manage the exempt pressure and flow.~~

Administrative amendments

170. In the issues paper, the ERA proposed to make various administrative amendments to the licence template.⁷⁴ A list of the administrative amendments can be found in Appendix 3 of this draft decision.
171. Appendix 3 contains one minor, new amendment to Schedule 2 that was not included in the issues paper.⁷⁵
172. The amendments listed in Appendix 3 are in addition to those set out in the preceding paragraphs of this draft decision; they do not incorporate the amendments set out in the preceding paragraphs.

Recommendation 20

Amend the licence template consistent with the amendments listed in Appendix 3 of this draft decision.

⁷⁴ [ERA, Issues Paper – Water Licence Review 2019, 24 April 2019](#), pg. 7 and Appendix 1.

⁷⁵ Proposed amendment to Schedule 2, clause 5.1.3.

Appendix 1 Water services licence template (current)

Appendix 2 Water services licence template (mark-up)

Appendix 3 Other amendments proposed by the ERA

Clause	Proposed amendment	Reason
- (page 1)	Include on page 1: <i>Operating area</i> <i>The area set out in the plan referred to in clause 2.5.</i>	<ul style="list-style-type: none"> Licence clauses in the template electricity, gas and water licences should, where possible, use consistent language and formatting. The proposed amendment is consistent with the template electricity licence.⁷⁶
- (page 1)	Signed by [a delegate ; / <u>a member</u> ; or / the Chair] of the Economic Regulation Authority <Date of amendment>	To clarify who has signed the licence.
1.2 [now 2.2]	<u>The commencement date of this licence is</u> <Original date of grant>.	Supporting text added.
1.3 [now 2.3]	<u>The expiry date of this licence is</u> <Date of expiry>.	Supporting text added.
1.4.1 [now 2.4.1]	This <i>licence</i> commences on the <i>commencement date</i> and continues until the earlier of: (a) the cancellation of the <i>licence for serious default</i> pursuant to clause 2.5 <u>3.5</u> of this <i>licence</i> ; (b) the surrender <u>cancellation</u> of the <i>licence on application of the licensee</i> , pursuant to clause 2.6 <u>3.6</u> of this <i>licence</i> ; or (c) the expiry date.	The amended wording is consistent with the wording in the Act.
2.1 [now 3.1]	Amendment of licence <u>on application of the licensee</u> by the licensee	The amendment clarifies that the licence cannot be amended by the licensee; only the ERA. The wording is also consistent with the wording in the Act.
2.1.1 [now 3.1.1]	The <i>licensee</i> may, at any time , apply to the <i>ERA</i> to amend the <i>licence</i> in accordance with the <i>Act</i> .	This proposed amendment is consistent with the template electricity licence.
2.2.1 [now 3.2.1]	The <i>ERA</i> may, at any time , amend the <i>licence</i> on its own initiative in accordance with the <i>Act</i> and the procedure specified in clause 2.2.2 <u>3.2.2</u> .	The proposed amendment is consistent with the removal of 'at any time' from clause 2.1.1 [now 3.1.1] of the template water licence.

⁷⁶ The template electricity licence uses the term 'licence area' as this is the term used in the *Electricity Industry Act 2004*. The *Water Services Act 2012* uses the term 'operating area'.

Clause	Proposed amendment	Reason
2.2.2 [now 3.2.2]	Before amending the <i>licence</i> under clause 2.2.1 3.2.1, the <i>ERA</i> must: <ol style="list-style-type: none"> provide the <i>licensee</i> with written <i>notice</i> of the proposed amendments under consideration by the <i>ERA</i>; allow 15 <i>business days</i> for the <i>licensee</i> to make submissions on the proposed amendments; and take into consideration those submissions. 	'Written' is removed from the clause because clause 2.7.1 [now 3.7.1] of the template water licence already provides that all notices, unless otherwise specified, must be in writing.
2.2.5 [now 3.2.5]	For avoidance of doubt, the licensee will not have to pay an associated application fee or licence fee for the purpose of clause 2.2.1.	This clause is not necessary as the <i>Economic Regulation Authority (Licensing Funding) Regulations 2014 (WA)</i> do not require a charge to be paid when the <i>ERA</i> amends a licence on its own initiative.
2.6 [now 3.6]	Cancellation of licence <u>on application of the licensee</u> by the licensee	The amendment clarifies that the licence cannot be cancelled by the licensee; only the <i>ERA</i> . The wording is also consistent with the wording in the Act.
2.6.1 [now 3.6.1]	The <i>licensee</i> may apply to the <i>ERA</i> to request cancellation of the <i>licence</i> at any time by written <i>notice</i> to the <i>ERA</i> .	<ul style="list-style-type: none"> The removal of 'at any time' is consistent with the removal of 'at any time' from clause 2.2.1 [now 3.2.1] of the template water licence. 'Written' is removed from the clause because clause 2.7.1 [now 3.7.1] of the template water licence already provides that all notices, unless otherwise specified, must be in writing.
2.7.2(e) [now 3.7.2(e)]	A <i>notice</i> will be regarded as having been sent and received [...] if sent by <u>electronic means</u> email when, according to the sender's electronic record, the <i>notice</i> has been successfully sent to the <u>addressee</u> . addressee's water licensing email address.	The proposed amendment is consistent with the template electricity licence.
2.8.1 [now 3.8.1]	The <i>ERA</i> may direct the <i>licensee</i> to <u>publish, within a specified timeframe,</u> any information within a specified timeframe it considers relevant in connection with the <i>licensee</i> or the performance by the <i>licensee</i> of its obligations under this <i>licence</i> .	The proposed amendment is consistent with the template electricity licence.
2.9.2 [now 3.9.2]	For the avoidance of doubt, this clause does not apply to a decision of the ERA pursuant to the Act, nor does it restrict the licensee's right to have a decision	This clause is not necessary because it is clear from clause 2.9.1 [now 3.9.1] and the definition of 'reviewable decision' that a review only applies to

Clause	Proposed amendment	Reason
	of the ERA reviewed in accordance with the Act.	decisions made by the ERA made under the licence.
3.1.2 [now 4.1.2]	Subject to the provisions of any <i>applicable legislation</i> , the ERA may direct the <i>licensee</i> in writing to do any measure necessary to: (a) correct the breach of any <i>applicable legislation</i> ; or (b) prevent the breach of any <i>applicable legislation</i> occurring again, and specify a time limit by which such action must be taken. <u>and specify a time limit by which such action must be taken.</u>	The words “and specify a time limit by which such action must be taken” have been moved to a separate line to clarify that they apply to subclauses (a) and (b).
3.3.1 [now 4.3.1]	The <i>licensee</i> must provide the water service set out in clause 1.1: (a) <u>provide the water service set out in clause 2.1</u> to persons entitled to the <i>water service</i> under the <i>Act</i> , except to the extent otherwise provided for by the <i>Act</i> ; and (b) if requested, <u>offer to provide the water service set out in clause 2.1</u> to any other person within the <i>operating area</i> on reasonable terms, unless the provision of the <i>water service</i> is not financially viable or is otherwise not practicable.	The proposed amendment is consistent with the wording in the Act.
3.6.1 [now 4.6.1]	The <i>licensee</i> and any <i>related body corporate</i> must maintain accounting records that comply with <u>standards issued by</u> the Australian Accounting Standards Board Standards or equivalent International Accounting Standards.	The proposed amendment is consistent with the template electricity licence.
3.7.1(a) [now 4.7.1(a)]	The <i>licensee</i> must report to the ERA: <u>(a)</u> if the <i>licensee</i> is under external administration as defined by the <i>Corporations Act 2001</i> (Cwth) within <u>two business days of such external administration occurring</u> ; or	The proposed amendment is consistent with the template electricity licence.
3.7.1(b) [now 4.7.1(b)]	The <i>licensee</i> must report to the ERA: (b) if the licensee : (i) <u>the licensee</u> experiences a material change in the licensee's <u>its</u> -corporate, financial or technical circumstances upon which this <i>licence</i> was granted; and	<ul style="list-style-type: none"> • Deletion of the word ‘material’ in paragraph (i) is consistent with the template electricity licence. • The words “the licensee” have been moved to paragraph (i), and “which” replaced with “the change”, to improve the readability of the clause.

Clause	Proposed amendment	Reason
	(ii) which the change may materially affect the licensee's ability to perform its obligations under this licence, within 10 business days of the change occurring; or	
3.7.1 (c)(iv) [now 4.7.1(c)(iv)]	The licensee must report to the ERA [...] if the description of works holding arrangement for the water service works, changes, within 10 business days of the change occurring.	The amendment clarifies that the reporting requirements relate to changes in the holding arrangements for water service works.
3.8.2 [now 4.8.2]	The licensee must comply with any information reporting requirements prescribed by the ERA, including but not limited to the provisions of the Water Compliance Reporting Manual, which apply to the licensee.	The template electricity licence does not include an equivalent clause for the Electricity Compliance Reporting Manual.
3.8.3(a) [now 4.8.2(a)]	Footnote: See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines The Handbook can be found on the ERA website.	For clarification.
4.1.1 [now 5.1.1]	The licensee must provide for, and notify the ERA of, an asset management system in respect of the licensee's water service works. within two business days from the commencement date unless otherwise notified in writing by the ERA.	The proposed amendment is consistent with the template electricity licence.
5.1.2 [marked-up licence]	<u>The licensee must notify the ERA of the details of the asset management system within five business days from the later of:</u> (a) <u>the commencement date; or</u> (b) <u>the completion of construction of the licensee's water service works.</u>	<ul style="list-style-type: none"> The proposed insertion of the new clause is consistent with the template electricity licence. The ERA may remove clause 5.1.2 and replace it with 'Not Used' following notification of the asset management system by the licensee.
4.1.3 [now 5.1.4]	The licensee must, unless otherwise notified in writing by the ERA, ; (a) conduct an asset management system review; and (b) provide the ERA with a report on <u>as to the effectiveness of</u> the asset management system review; within 24 months after the commencement date and every 24 months thereafter.	<ul style="list-style-type: none"> Subclause (a) is proposed to be deleted as it is inconsistent with clause 4.1.4 [now 5.1.5] which provides that an asset management system review must be conducted by an independent expert appointed by the ERA. The proposed insertion of the words "as to the effectiveness of" is consistent with the template electricity licence.

Clause	Proposed amendment	Reason
4.1.4 [now 5.1.4]	The <i>asset management system review</i> must be conducted by an independent expert appointed by the ERA in its sole discretion . The ERA will determine the terms of the appointment of the independent expert.	The amendment clarifies that the ERA will consult with the licensee before engaging an independent expert (the auditor). However, the ERA is responsible for the engagement of the auditor. The ERA does not require the licensee's consent to appoint the auditor. Nor does the licensee have the right to amend the proposed terms and conditions for the engagement or appointment of the auditor.
4.1.6 [now 5.1.7]	The licensee must cooperate with the independent expert and comply with the ERA's standard guidelines <i>audit and review guidelines</i> dealing with the <i>asset management system review</i> .	The proposed amendment reflects the current title of the ERA's guidelines for audits and reviews: <i>Audit and Review Guidelines – Water Licences</i> .
4.1.6 [now 5.1.7]	Footnote: The guidelines can be found on the ERA website.	For clarification.
4.3.2 [now 5.3.2]	The <i>operational audit</i> must be conducted by an independent expert appointed by the ERA in its sole discretion . The ERA will determine the terms of the appointment of the independent expert.	See reasoning for 4.1.4 [now 5.1.4] above.
4.3.4 [now 5.3.4]	The licensee must cooperate with the independent expert and comply with the ERA's standard audit guidelines <i>audit and review guidelines</i> dealing with the <i>operational audit</i> .	The proposed amendment reflects the current title of the ERA's guidelines for audits and reviews: <i>Audit and Review Guidelines – Water Licences</i> .
4.3.4 [now 5.3.4]	Footnote: See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines The guidelines can be found on the ERA website.	For clarification.
5.5.1 [now 6.2.1]	The licensee must not supply <i>water services</i> to <i>customers</i> unless the licensee is : (a) is a member of the <i>water services ombudsman scheme</i> ; and (b) is bound by the <i>water services ombudsman scheme</i> ; and (c) bound by, and will be compliant with any decision or direction of the water services ombudsman under the <i>water services ombudsman scheme</i> .	The proposed amendment is consistent with the wording in the Act.

Clause	Proposed amendment	Reason
5.6.1 [now 6.3.1]	<p>If the <i>licensee</i> is appointed the <i>supplier of last resort</i> for a designated area <u>in relation to the provision of a particular water service</u> under the <i>Act</i>, the <i>licensee</i> must:</p> <p>(a) perform the functions of the <i>supplier of last resort</i> for the designated area and the class of <i>water service</i>;</p> <p>(b) comply with the duties imposed in relation to those functions under the <i>Act</i>; and</p> <p>(c) carry out its operations under or for the purposes of the <i>last resort supply plan</i> in accordance with the <i>Act</i>.</p>	<ul style="list-style-type: none"> The proposed amendment clarifies what is meant by the 'class of water service'. This proposed amendment is also consistent with the wording in the <i>Act</i>. The clause has also been re-structured to make it easier to read.
6.1.1 [now 7.1.1]	Where the <i>licensee</i> is, or intends to, provide <i>potable water</i> , the <i>licensee</i> must enter into a <i>MoU</i> <u>as described in this clause 7.1</u> with the <i>Department of Health</i> as soon as practicable after the <i>commencement date</i> or as otherwise agreed with the <i>Department of Health</i> .	Insertion of more specific wording.
6.1.2(b) [now 7.1.2(b)]	<p>The <i>MoU</i> must:</p> <p>(a) [...]</p> <p>(b) requiring<u>require</u> an audit by the <i>Department of Health</i> on compliance by the <i>licensee</i> with its obligations under the <i>MoU</i> at least once every three years, or other such time as notified by the <i>Department of Health</i>, and the provision of the audit report to the ERA.</p>	Correction of a typographical error.
7.1 [now 1.1]	<p>Clause 7.1 – Definitions</p> <p>[Move clause 7.1 to the start of the licence (clause 1.1)]</p>	The proposed amendment is consistent with the template electricity licence.
7.1.1 [now 1.1.1]	asset management system means the measures that are to be taken by the <i>licensee</i> for the proper maintenance, expansion or reduction <u>provision and operation</u> of the <i>water service works</i> , <u>including measures for the provision and operation of any other water services works necessary for the provision of water services under this licence.</u>	The proposed amendment is consistent with the wording in the <i>Act</i> .
7.1.1 [now 1.1.1]	audit and review guidelines means <u>the guidelines prepared by the ERA setting out the ERA's requirements for the conduct of operational audits and</u>	Proposed definition added to replace the term 'standard audit guidelines' and 'standard guidelines' which are not

Clause	Proposed amendment	Reason
	<u>asset management system reviews, as published by the ERA on its website and as amended from time to time.</u>	defined terms in the current water licence template.
7.1.1 [now 1.1.1]	Code of Conduct means the <i>Water Services Code of Conduct (Customer Service Standards)</i> 2013 <u>2018</u> as amended or replaced from time to time.	The Water Code was amended in 2018.
7.1.1 [now 1.1.1]	commencement date means the date specified in clause 4.4 <u>2.2</u> .	Correction of a typographical error (the commencement date is specified in subclause 2).
7.1.1 [now 1.1.1]	<u>electronic means</u> means: <u>(a) the internet;</u> <u>(b) email, being:</u> <u>(i) in relation to the ERA, the ERA's email address as notified to the licensee; and</u> <u>(ii) in relation to the licensee, the email address specified in the licence application or other such email address as notified in writing to the ERA; or</u> <u>(iii) any other similar means,</u> <u>but does not include facsimile or telephone.</u>	Amended clause 2.7.2(e) [now 3.7.2(e)] includes the term 'electronic means'. The proposed definition is consistent with the definition of 'electronic means' in the template electricity licence.
7.1.1 [now 1.1.1]	financial hardship policy means a policy referred to in clause 26 <u>29</u> of the Code of Conduct.	The Water Code was amended in 2018. Clause 26 was renumbered as clause 29.
7.1.1 [now 1.1.1]	National Performance Framework: urban performance reporting indicators and definitions handbook means the handbook initially produced by the National Water Commission of the same name <u>published by the Bureau of Meteorology</u> as amended or replaced from time to time.	The National Water Commission was abolished on 16 June 2015. The Bureau of Meteorology now publishes the handbook.
7.1.1 [now 1.1.1]	residential customer means a customer to which water services are sold or supplied in respect of the place used <u>who uses the place in respect of which a water service is provided</u> solely or primarily as the <i>customer's</i> dwelling.	The definition was originally derived from the definition of 'financial hardship' in the 2013 Water Code: financial hardship means being in an ongoing state of financial disadvantage in which the customer's ability to meet the basic living needs of the customer or a dependant of the customer would be adversely affected if the customer were to pay an unpaid bill for a water service supplied in respect of the place used solely or primarily as the customer's dwelling [our emphasis].

Clause	Proposed amendment	Reason
		<p>The 2018 Water Code contains a stand-alone definition for residential customer:</p> <p>residential customer means a customer who uses the place in respect of which a water service is provided solely or primarily as the customer's dwelling;</p>
<p>7.1.1 [now 1.1.1]</p>	<p>reviewable decision means a decision by the ERA pursuant to:</p> <p>(a) clause 2.8.3 3.8.1; and</p> <p>(b) clause 4.1.6;</p> <p>(c) clause 4.2.2 5.2.2; and</p> <p>(d) clause 4.3.4;</p> <p>of this licence.</p>	<ul style="list-style-type: none"> The reference to clause 2.8.3 [now 3.8.3] has been replaced with a reference to [now] clause 3.8.1. Clause 2.8.3 [now 3.8.3] did not provide for the ERA making a decision. The reference to clause 2.8.3 was therefore incorrect. The ERA does make a decision under clause 2.8.1 [now 3.8.1]. The ERA will include a reference to clause 3.8.1 in the definition of 'reviewable decision'. Clauses 4.1.6 [now 5.1.7] and 4.3.4 [now 5.3.4] do not provide for the ERA making a decision. As there is no decision to be reviewed, the ERA will delete reference to clauses 4.1.6 [now 5.1.7] and 4.3.4 [now 5.3.4] from the definition of 'reviewable decision'. The ERA's <i>2019 Audit and Review Guidelines: Water Licences</i> require the licensee to comply with the guidelines.
<p>7.1.1 [now 1.1.1]</p>	<p>Water Compliance Reporting Manual means the reporting manual issued by the ERA, as amended or replaced from time to time.</p>	<p>Consequential amendment following the removal of clause 3.8.2.</p>
<p>7.1.1 [now 1.1.1]</p>	<p>water licensing email address means:</p> <p>(a) in relation to the ERA, the addressee's authorised ERA email address or other such email address as notified in writing to the licensee; and</p> <p>(b) in relation to the licensee, the email address specified in the licence application or other such email address as notified in writing to the ERA.</p>	<p>Consequential amendment following the proposed changes to clause 2.7.2(e) [now 3.7.2(e)].</p>
<p>7.2 [now 1.2]</p>	<p>Clause 7.2 – Interpretation [Move clause 7.2 to the start of the licence (clause 1.2)]</p>	<p>The proposed amendment is consistent with the template electricity licence.</p>

Clause	Proposed amendment	Reason
7.2.1 [now 1.2.1]	A reference in this licence to any <i>applicable legislation</i> includes, unless the context otherwise requires, any statutory modification, amendment, replacement or re-enactment of that <i>applicable legislation</i> .	The proposed amendment is consistent with the template electricity licence.
Schedule 2, clause 5.1.3	The <i>licensee</i> must comply with the standards and principles as set out below.	The table included in Schedule 2, clause 5.1.3 only sets out standards.

Appendix 4 Legislative provisions referenced in the draft decision

Water Services Act 2012

Section 10 Application for licence

- (1) An application for a licence must be —
 - (a) made in a form approved by the Authority; and
 - (b) accompanied by the prescribed fee.
- (2) Without limiting subsection (1)(a), an applicant for a licence must inform the Authority of —
 - (a) the nature of the proposed water service or services that the applicant proposes to provide; and
 - (b) for each class of water service that the applicant proposes to provide —
 - (i) the area or areas of the State in which it is proposed to provide the service; and
 - (ii) the methods or principles that the applicant proposes to apply in the provision of the service; and
 - (iii) the nature of the water service works to be used in the provision of the service; and
 - (iv) the standard terms and conditions for the provision of the service; and
 - (v) the standard customer contracts (if any) for the provision of the service.

Section 12 Conditions of licence

- (1) A licence may be subject to conditions which, without limiting that, may deal with the following —
 - (a) the quality and performance standards to be met by the licensee in the provision of a water service authorised by the licence;
 - (b) the community service obligations to be discharged by the licensee, that is, obligations that are not commercially justifiable;
 - (c) the licensee complying with specified standards or codes of practice, with specified modifications, other than a code of practice made under section 26;
 - (d) standard terms and conditions for the provision of a water service by the licensee;
 - (e) standard customer contracts for the provision of a water service by the licensee, including requiring the licensee to offer to enter into standard customer contracts with specified classes of person;
 - (f) the capacity of the licensee to enter into agreements that vary or displace standard terms and conditions of service, standard customer contracts or statutory water service charges;

- (g) the capacity of the licensee to cut off or restrict the rate of flow of the supply of water to land, including the matters that the licensee must take into account before doing so;
- (h) the metering of water services by the licensee including —
 - (i) the provision, operation and maintenance of metering equipment; and
 - (ii) ownership of and access to metering data;
- (i) the transfer of customers to or from the licensee;
- (j) the exercise of powers of entry by persons authorised by the licensee, including by restricting the exercise of such powers;
- (k) the giving of compliance notices by the licensee, including by restricting the giving of such notices;
- (l) methods or principles to be applied by the licensee in the preparation of accounts for customers;
- (m) the giving of encumbrances over property of the licensee, including by making that subject to the approval of the Authority;
- (n) the disposal or transfer of property, rights or liabilities of the licensee either during the currency of the licence or on or after its expiration or cancellation, including by prohibiting the disposal or transfer;
- (o) the imposition of obligations on the licensee with respect to public authorities and other licensees;
- (p) planning for the future provision of water services, including planning for the development of future water sources;
- (q) the licensee developing and implementing programmes for the conservation and efficient use of water, including in relation to the use of water by customers of the licensee;
- (r) the provision of information to customers;
- (s) the licensee giving the Authority information relevant to the Authority's functions under this Act.

Section 17 Amendment of licence – on initiative of Authority

- (1) The Authority may, on its own initiative, amend a licence, if satisfied that it would not be contrary to the public interest to do so.
- (2) The Authority cannot amend a term or condition of a licence that was not determined by the Authority.
- (3) If the licence specifies a procedure to be followed in amending it, the amendment must be made in accordance with that procedure unless the Authority and the licensee agree otherwise.
- (4) An amendment takes effect 14 days after the licensee has been notified of the amendment unless —
 - (a) a longer period is specified by the Authority or provided by the procedure referred to in subsection (3); or
 - (b) a shorter period is agreed to by the Authority and the licensee.

Section 46 Matters relevant to determination of public interest

If the Authority is required under this Part to determine whether or not something would be contrary to the public interest, then, without limiting the things that the Authority may take into account, the following matters must be taken into account to the extent to which the Authority considers that they are relevant to the particular case —

- (a) environmental considerations, including the value of ecologically sustainable development;
- (b) public health considerations relating to the provision of reliable water services.

Section 71 Terms used

- (1) In this Part, unless the contrary intention appears —

standard terms and conditions of service, in relation to a water service provided by a licensee to a person, means —

- (a) the terms and conditions for the provision of the service under a standard customer contract between the licensee and the person (if there is one); and
- (b) the standard terms and conditions for the provision of the service under the licence, to the extent to which the provision of the service is not covered by a standard customer contract; and
- (c) the standard terms and conditions for the provision of the service published from time to time by the licensee on the licensee's website (or as otherwise prescribed), to the extent to which the provision of the service is not covered by standard terms and conditions under the licence or a standard customer contract;

Section 73 Statutory entitlement to provision of water services

- (1) The owner of land in respect of which statutory water service charges apply for the provision of a water service by a licensee is entitled to the provision of the water service.
- (2) The owner's entitlement is subject to —
 - (a) the terms and conditions of the provision of the service; and
 - (b) the charges referred to in subsection (1), that are due to the licensee, being paid; and
 - (c) the provisions of this Part.

Section 74 Terms and conditions of provision of water services

- (1) For the purposes of section 73(2)(a), the terms and conditions of the provision of the service to which the owner is entitled under section 73 are —
 - (a) the standard terms and conditions of service (if any) in relation to the service and the licensee, except to the extent to which the standard terms and conditions of service are inconsistent with the terms and conditions referred to in paragraph (b); and
 - (b) the terms and conditions of the provision of the service in an agreement about the provision of the service (if any), to the extent to which those terms and conditions are binding on the owner.

Note for this subsection:

Section 76 provides that certain terms and conditions of agreements about the provision of a water service are binding on subsequent owners of the land in certain circumstances.

- (2) To the extent to which standard terms and conditions of service apply to the provision of a water service by a licensee other than under a standard customer contract, the licensee is to be taken to have approved of the provision of the service on those terms and conditions.
- (3) If a licensee provided a non-standard water service in respect of land immediately before this section came into operation and there is no written agreement about the provision of the service, the licensee is to be taken to have approved of the provision of the service on terms and conditions that reflect the nature of the service provided.
- (4) Subsection (3) applies in relation to the provision of a non-standard water service in respect of land to the exclusion of subsections (1) and (2) until the service is no longer required or the owner of the land enters into an agreement about the provision of the service.
- (5) In subsections (3) and (4) —

non-standard water service means a water service, of a particular type, the provision of which is different in some material way from the usual provision of water services of that type.

Section 75 Agreements about provision of water services

- (1) An agreement between a licensee and a person about the provision of a water service does not have effect to the extent to which it is inconsistent with this Act and the conditions of the licence under which the licensee provides the water service.
- (2) Without limiting what an agreement may cover, it may cover the following matters —
 - (a) special circumstances that result in difficulties in providing a water service (for example, low pressure or flow rates), any special measures to deal with those circumstances and additional charges to cover the cost of the special measures;
 - (b) if statutory water service charges do not apply for the provision of a water service — the water service charges for the provision of the service;
 - (c) if statutory water service charges apply for the provision of a water service — alternative water service charges for the provision of the service;
 - (d) security for the future payment of fees and charges.
- (3) If an agreement provides for alternative water service charges for the provision of a water service —
 - (a) statutory water service charges do not apply to the provision of the service to the extent to which alternative water service charges are provided for by the agreement; and
 - (b) if a statutory water service charge that does not apply because of paragraph (a) would have applied in respect of land — an alternative water service charge that corresponds to the statutory water service charge applies in respect of the land, unless the agreement provides otherwise; and
 - (c) the agreement does not have effect to the extent to which a person who is not bound by the agreement would otherwise be placed in a less favourable

position than the person would have been in if the agreement had not been made.

Water Services Regulations 2013

Regulation 24 Access to meters and their associated fittings

- (1A) In this regulation —
meter includes any associated fittings attached to the meter.
- (1) The owner or occupier of land must —
- (a) maintain a clear space, of at least 300 mm horizontally and 1 200 mm vertically, around any meter on or associated with the land that is connected to water service works of a licensee; and
 - (b) ensure easy and safe access to the meter at all times.
- Penalty: a fine of \$1 000.
- (2) A person must not connect a branch or fitting to a property water supply connection within 1 m of a meter or stop-cock of the licensee that is connected to the property water supply connection, except in accordance with the approval of the licensee.
- Penalty: a fine of \$1 000.
- (3) If a licensee is satisfied that a person has failed to comply with subregulation (1) or (2) in relation to a meter connected to the water service works of the licensee, the licensee may give a compliance notice to the person.
- Note for this subregulation:
 See section 118 of the Act in relation to compliance notices.
- (4) The licensee must specify in the notice —
- (a) that the licensee is satisfied that the person given the notice has failed to comply with subregulation (1) or (2); and
 - (b) what the person given the notice must do to remedy the failure to comply; and
 - (c) the time within which the person given the notice must comply with the notice (which must be at least 7 days).

Water Services Code of Conduct (Customer Service Standards) 2018

Clause 4 Application of code

- (1) In this clause —
drinking water means —
- (a) potable water; and
 - (b) water that is not potable but that is supplied on the basis that the customer is responsible for treating the water to make it fit for humans to drink.

Clause 5 Contracting out

- (1) Nothing in this code prevents a licensee and a customer who is not a residential customer from entering into an agreement that varies or displaces the requirements of this code in relation to the licensee or customer.
- (2) Subclause (3) applies if the licence of a licensee (the licensee) is one to which Schedule 1 clause 10(1) of the Act applies.
- (3) If an agreement between the licensee and a customer that was in effect on 18 November 2013 and remains in effect has provisions that are inconsistent with this code in relation to the licensee or customer, the provisions of the agreement prevail to the extent of the inconsistency.

Economic Regulation Authority Act 2003**Section 26 Authority to have regard to certain matters**

- (1) In performing its functions, other than the functions described in section 25(c) and (d), the Authority must have regard to —
 - (a) the need to promote regulatory outcomes that are in the public interest;
 - (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
 - (c) the need to encourage investment in relevant markets;
 - (d) the legitimate business interests of investors and service providers in relevant markets;
 - (e) the need to promote competitive and fair market conduct;
 - (f) the need to prevent abuse of monopoly or market power;
 - (g) the need to promote transparent decision-making processes that involve public consultation.
- (2) The Authority has a discretion as to the weight it gives to each of the matters referred to in subsection (1) in the performance of a particular function.
- (3) Nothing in subsection (1) limits a provision of another written law that requires the Authority, in performing a particular function, to have regard to, or take into account, particular objectives, considerations or other matters.
- (4) If there is any conflict or inconsistency between subsection (1) and a provision described in subsection (3), the latter provision prevails to the extent of the conflict or inconsistency.

Electricity Regulations 1947**Regulation 243 Voltage on neutral conductor**

- (1) The voltage on the neutral conductor of a consumer's installation must be below 6 volts AC.

Electricity Industry (Network Quality and Reliability of Supply) Code 2005

Clause 5 Obligation to observe standards

- (1) A transmitter and a distributor must, so far as is reasonably practicable, ensure that electricity supplied by the transmitter or distributor to a customer's electrical installations, as measured at the point of connection of those installations to the network, at all times complies with the standards prescribed by sections 6(2) and 7.
- (2) Subsection (1) does not apply to electricity supplied to a customer's electrical installations if the cause of the non-compliance —
 - (a) is in those installations; or
 - (b) is an act or omission of the customer.

Clause 6 Voltage fluctuations

- (1) In the Table to subsection (2), the expressions P_{st} and P_{lt} have the meanings that they have, as at the commencement of this Code, in Part 3.7 clause 3 of Standard 61000:2001 published jointly by Standards Australia and the Standards Council of New Zealand.
- (2) The standard for the voltage fluctuation of electricity supplied is a level of fluctuation that is less than the compatibility levels set out in the Table to this subsection.

Table

	Compatibility levels
P_{st}	1.0
P_{lt}	0.8