

Operation of the water licensing scheme and licensee compliance – Annual Report 2019/20

1 December 2020

Economic Regulation Authority

WESTERN AUSTRALIA

D220703

Economic Regulation Authority

Level 4, Albert Facey House

469 Wellington Street, Perth WA 6000

Telephone 08 6557 7900

Email info@erawa.com.au

Website www.erawa.com.au

This document can also be made available in alternative formats on request.

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Chair's foreword

The Economic Regulation Authority is Western Australia's independent economic regulator and is responsible for administering the licensing scheme governing the supply of water, sewerage, drainage and irrigation services to customers.

The ERA has a statutory obligation to report annually to the Minister for Water on the operation of the water licensing scheme and licensee compliance. The ERA prepares this report each year.

The ERA's assessment is that Western Australia's water licensing scheme is, for the most part, operating effectively.

As the COVID-19 pandemic emerged in the early part of 2020, the ERA relaxed the deadlines for licence audits and asset management system reviews for utility licensees, including water. This was to allow for travel restrictions hindering site visits, to facilitate the need for social distancing on site and the need for licensees to focus on providing essential services.

Through the preparation of this year's report, the ERA has identified no new opportunities to improve the operation of the licensing scheme.

The areas for reform identified in last year's report have not yet been addressed, but the Department of Water and Environment Regulation has advised the ERA that it intends to review the *Water Services Act 2012* in the near future. This review will include consideration of the reforms proposed by the ERA in this report.

The ERA maintains the recommendations from last year's report, which include:

- Changes to the *Water Services Act 2012* to ensure that rental tenants receive the same level of customer protections as owner-occupiers.
- Changes to the regulatory framework to ensure that eligible customers do not lose their concession rebate if they are in financial hardship and fail to pay their bill on time.
- Changes to allow the ERA to scrutinise the financial, technical and public interest aspects of a new company taking over an existing water licence.



Nicola Cusworth

Chair, Economic Regulation Authority

1. Introduction

1.1 Purpose of this report

This is the second edition of a report that the ERA publishes once a year to report on the operation of the water licensing scheme and provide an overview of licensee compliance during the reporting year.¹

As the independent regulator, the ERA is in a position to identify current and emerging issues with the licensing scheme and to suggest improvements.

The State Government is responsible for the legislative framework that establishes the scheme. This report includes recommendations on how the Government could improve the operation of the scheme.

1.1.1 Legislative requirements

Section 207 of the *Water Services Act 2012* (Water Act) requires the ERA to:

- Monitor and report to the Minister for Water (Minister) on the operation of the licensing scheme and on compliance by licensees with their licences.
- Monitor and report to the Minister on the performance of:
 - the water services industry and of the participants in the industry.
 - providers of water services.
- Inform the Minister about any material failure by a licensee to meet operational standards or other requirements of its licence or licences.²

This report forms part of the ERA's function to report to the Minister on the operation of the scheme.

The ERA requires all water licensees to submit an annual compliance report identifying possible licence breaches that have occurred during the reporting year and publishes annual performance data collected from water licensees.

Sections 24 and 25 of the Water Act require licensees to complete independent performance audits and asset management reviews on a periodic basis, and to give the reports to the ERA for its consideration. The reports identify any non-compliances with a licence and determine if a licensee has an effective asset management system. The *Water Services Regulations 2013* (Water Regulations) require the ERA to give the reports, and a report by the ERA on the findings of the audit and review, to the Minister.³

¹ The reporting year is the year ending 30 June.

² The full text of section 207 of the Water Act is in Appendix 1.

³ Regulation 7 requires the ERA to give the Minister a report on each performance audit and asset management system review within two months of being provided the report. The full text of regulation 7 is in Appendix 1.

1.2 Report scope and structure

The scope of this report is set by section 207 of the Water Act, which requires the ERA to report to the Minister on the operation of the scheme and licensee compliance. To achieve this, the report:

- Identifies opportunities for beneficial reform of the scheme for consideration by the Minister.
- Provides an overview of the ERA's licensing activities during the year, including reviews of codes, licences, regulatory guidelines and reporting manuals.
- Presents data on the annual costs the ERA incurs in carrying out its licensing functions, which licensees are required to pay through fees and charges.
- Provides an overview of licensee compliance during the reporting year, including performance audits and asset management system reviews.

The scope of the recommendations to improve the scheme do not include those parts of the scheme that the Minister is not responsible for, such as the *Water Services Code of Conduct (Customer Service Standards) 2018* (Customer Code) and individual licence conditions. These are the responsibility of the ERA and dealt with in separate review processes.

1.3 Licensing scheme

The licensing scheme is established in Part 2 of the Water Act.

The ERA is the regulator of the scheme and has many functions, including:

- Granting, amending, transferring and renewing licences for entities that supply potable (drinking) water, non-potable water, sewerage, irrigation and drainage services in Western Australia.⁴
- Monitoring and enforcing compliance with licences.⁵
- Monitoring and reporting on the performance of licensees through the annual collection and publication of performance data.⁶
- Arranging performance audits and asset management system reviews of individual licensees.⁷

The ERA recovers its licensing costs from licensees under the *Economic Regulation Authority (Licensing Funding) Regulations 2014*. Information about the ERA's licensing costs is in Appendix 2.

The Minister is responsible for maintaining the legislative framework for the licensing scheme, which consists of the Water Act, Water Regulations and Customer Code.⁸ This involves making amendments to the legislative framework as and when they are required. The Minister is supported by the State Government's water policy agency, the Department of Water and Environmental Regulation (DWER).

⁴ Water Act s11, 13, 15, 17 and 18. The full text of these sections is in Appendix 1.

⁵ Water Act s31 and s207. The full text of these sections is in Appendix 1.

⁶ Water Act s12(1)(s). The full text of this section is in Appendix 1.

⁷ Water Act s24 and s25. The full text of these sections is in Appendix 1.

⁸ The codes and regulations that a licensee must comply with are listed in a licence.

2. Areas for reform

This chapter identifies opportunities for beneficial reform of the water licensing scheme that the ERA has identified from carrying out its licensing functions.

The report provides an update on the status of areas of reform of the scheme identified in previous reports published by the ERA. In 2019/20, the ERA did not identify any new areas of reform that have not been identified in previous reports.

The recommended reforms are set out in order of priority according to the benefits for consumers and licensees if they are addressed.

2.1 Definition of customer in the Water Services Act 2012

The definition of ‘customer’ in the *Water Services Act 2012* does not include all tenants, which means that some tenants do not receive all the consumer protections available under the licensing scheme.

Reform

The definition of “customer” in the Water Act does not include all tenants.⁹ It covers only tenants who have a direct contractual relationship with their water service provider. As it is unusual for tenants in Western Australia to have a direct contractual relationship with their water service provider, most tenants are not covered by the Water Act, the Water Regulations or the Customer Code.

One of the reasons for tenants not having a direct contractual relationship with their water service provider is because the owner of the property is liable for all water service charges.¹⁰

The property owner being responsible for unpaid charges protects the tenant from having to pay those charges and gives the water service provider certainty that it will be able to recover any amounts owed, which reduces its debt recovery costs. However, these advantages are offset by tenants not receiving customer protections under the licensing scheme.

For example, tenants who are not covered by the Customer Code are not entitled to protections, including:

- A payment plan if they are unable to pay a bill.
- Assistance if they are experiencing financial difficulties.
- Receiving certain information on their bill, which could help them make informed decisions about their water usage (some tenants receive an invoice from their real estate agent, rather than an itemised bill from the service provider).

The advantage for the tenant in not being liable for charges is also likely to be exercised only in limited circumstances; for example, where a property owner and tenant have agreed that the tenant will pay the charges and the tenant does not pay those charges, with the responsibility for paying the charges then falling on the property owner. However, a refusal by the tenant to pay the charges is likely to cause difficulties for the tenant in maintaining their

⁹ The Water Act’s definition of ‘customer’ is in Appendix 1.

¹⁰ Section 126(1) of the Water Act. The full text of section 126(1) is in Appendix 1.

tenancy, which diminishes any advantage the tenant may have from not being liable for the charges.

For most tenants, avoiding paying water charges, and the difficulties this may cause with their landlord, is unlikely to outweigh the value of the customer protections that a tenant would receive under the licensing scheme if the Water Act's definition of customer included all tenants.

To ensure all tenants are covered by the Customer Code and receive its protections, the Water Act's definition of customer should be amended to include all tenants.

Treating tenants as customers would make water services consistent with other utility services, such as electricity, gas and telecommunications.¹¹

Progress update

Since the 2018/19 annual report on the operation of the water licensing scheme was published, there have been no changes to the Water Act to address this recommendation. The recommendation is therefore carried forward into this report.

Recommendation

Amend the definition of customer in the *Water Services Act 2012* to include all tenants.

2.2 Limitations on payment plans offered to customers by the Water Corporation

The regulatory and policy framework that sets the number of days a customer who holds an eligible concession card has to pay their bill before they lose their rebate may be inconsistent with the Customer Code, if a customer has been assessed as experiencing financial difficulties or financial hardship and their capacity to pay the bill has not been taken into account as part of the decision to remove their rebate.

Reform

Water Corporation customers who hold an eligible concession card can lose their rebate for service charges if they do not pay their bill within 50 days.¹² The Water Corporation's policy is based on section 40 of the *Rates and Charges (Rebates and Deferments) Act 1992* (Rebates Act).¹³

The Rebates Act allows the Water Corporation to extend the payment date by an additional 70 days. However, information provided by the Water Corporation indicates that it does not give customers this additional time to pay their bill before customers lose their rebate.

¹¹ A more detailed discussion on this issue is in the Economic Regulation Authority's *Final Decision – 2017 Review of the Water Services Code of Conduct 2013*, p. 8-9. ([online](#)).

¹² For example, the ConcessionsWA website states that a customer who owns and occupies the property and holds a WA Seniors Card and Commonwealth Seniors Health Card is entitled to receive a rebate of up to 50 per cent on water service charges, up to \$600. ([online](#)) [accessed 20 November 2020].

¹³ The relevant text of section 40 is in Appendix 1.

The Rebates Act and the Water Corporation's policy are inconsistent with the Customer Code, which requires licensed service providers to consider the customer's capacity to pay their bill when entering a payment plan.¹⁴

The ERA is concerned that, to retain their rebate, customers may agree to a payment plan that fails to take account of their individual needs. The duration of a payment plan should be determined by the customer's capacity to pay the debt owed, rather than being set at a predefined period stipulated in legislation.

The Rebates Act should be amended to provide that customers who have been assessed as experiencing financial difficulties or financial hardship do not lose their rebate if they fail to pay their bill on time, provided they have entered a payment plan to pay the arrears (regardless of the duration of the plan).

The Minister for Finance is responsible for the Rebates Act, but this matter has been included in this report because it came to the attention of the ERA through its review of the Customer Code.

As any amendments to the Rebates Act will take time to consider and implement, the Water Corporation may wish to give eligible customers the maximum time allowable under the Rebates Act to pay their bill to improve their chances of retaining the rebate.

Progress update

Since the 2018/19 annual report on the operation of the water licensing scheme was published, there have been no changes to legislation to address this recommendation. The recommendation is therefore carried forward into this report.

Recommendation

The relevant provisions of the regulatory framework, including the *Rates and Charges (Rebates and Deferments) Act 1992*, should be amended to provide that customers who have been assessed as experiencing financial difficulties or hardship do not lose their rebate if they fail to pay their bill on time, providing they have entered into a payment plan (regardless of the duration of the plan).

2.3 Customer contracts

The *Water Services Act 2012* does not include a framework for the content and approval of water customer contracts to ensure customers are adequately protected.

Reform

The Water Act 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 does not prescribe minimum standards for contracts or a role for the ERA in approving contracts.

¹⁴ The Customer Code's capacity-to-pay test is in clause 28(3) for customers experiencing payment difficulties and clause 30(3) for customers experiencing financial hardship. The full text of the clauses is in Appendix 1.

The lack of a comprehensive framework for customer contracts in the Water Act led the ERA to include conditions on customer contracts in its water licences, including an approval role for the ERA over customer contracts and non-standard agreements. However, the ERA now considers that without a statutory approval role, a water licence cannot provide the ERA with the authority to approve customer contracts. As part of the Water Licence Review 2019, the ERA recommended removing customer contract conditions from water licences.¹⁵

It is a policy matter for Government to decide whether the ERA should have an approval role for contracts and, if so, to specify the basis on which the ERA should approve or not approve contracts. The ERA also considers that prescribing terms and conditions of service is a policy matter for Government, not the regulator.

In its submission to the ERA's issues paper on the Water Licence Review 2019, DWER did not support the proposed removal of the contract provisions from water licences. DWER considered that it was important for customers to be able to contract out of the performance standards with their service provider. DWER also considered that water licences provided a transparent onus on licensees to align their contracts with the Water Act.¹⁶

The ERA does not agree with DWER that customers should be able to contract out of the performance standards. Most customers have little or no bargaining 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.¹⁷

The ERA also does not agree that water licences provide a transparent onus on licensees to align their contracts with the Water Act. Neither water licences nor the Water Act provide guidance on the matters that should be addressed in a customer contract or standard terms and conditions.

In its submission, DWER advised that it intended to consider, as part of a review of the Water Act, whether Government should make regulations or codes on customer contracts.¹⁸

In its draft decision on the Water Licence Review 2019, the ERA proposed removing clauses 5.1 and 5.3 from water licences. Clause 5.1 requires a licensee, if directed by the ERA, to submit a draft customer contract to the ERA for approval. Clause 5.3 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.¹⁹

In its draft decision, the ERA proposed retaining clause 5.2 of water licences, in a modified form, until DWER has completed its review of the Water Act. Amended clause 5.2 will allow the ERA to direct a licensee to amend a standard term or condition for the provision of a water service 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.

¹⁵ Economic Regulation Authority, 2019, *Water licence review 2019 – Draft decision*, p.14-19.

¹⁶ Department of Water and Environmental Regulation, 2019, Submission to the ERA on its *Issues paper – Water Licence Review 2019*. ([online](#)) [accessed 20 November 2020].

¹⁷ Under clause 5(1) of the Water Code, non-residential customers will continue to be able to contract out of the Water Code. The text for clause 5(1) is in Appendix 1.

¹⁸ Department of Water and Environmental Regulation, 2019, Submission to the ERA on its *Issues paper – Water Licence Review 2019*. ([online](#)) [accessed 20 November 2020].

¹⁹ Clause 5.3.3 of the water licence lists two exemptions from the requirement to seek ERA approval: if the ERA has previously approved contract terms and conditions that deviate from the licence or Water Code, or if those terms and conditions were in force before 18 November 2013.

Progress update

In its final decision on the Water Licence Review 2019, which was published on 20 April 2020, the ERA confirmed its position from the draft decision to remove clauses 5.1 and 5.3 from water licences and amend clause 5.2.²⁰

As there have been no changes to the Water Act or subordinate legislation to address this recommendation since the 2018/19 annual report on the operation of the water licensing scheme was published, the recommendation is carried forward into this report.

Recommendation

The *Water Services Act 2012* and relevant subordinate legislation should be amended to include a customer protection framework for customer contracts.

2.4 Performance standards

There is a lack of clarity in the regulatory framework, in particular the *Water Services Act 2012*, on the role of the ERA in setting performance standards for licensees.

Reform

The performance standards set out in Schedule 2 of water licences cover potable water services (pressure and flow), drainage services and irrigation services.

Many of the standards set out in Schedule 2 are design standards. For example, the performance standards for potable water and drainage services require licensees to design, construct, operate and maintain their works to a certain standard. They do not entitle potable water or drainage service customers to a prescribed standard of service.

As part of the Water Licence Review 2019, the ERA proposed deleting the standards, as it considers that setting performance standards for water licensees is a policy matter for Government.

The Water Act does not include an express requirement for the ERA to impose performance standards on licensees. The Water Act provides only a discretionary power to the ERA to deal with performance standards in the licence. However, the Act and Water Regulations do not provide any guidance on performance standards, including what the standards should be and the services they should apply to. This is different from other utility industries, such as electricity, where Government has prescribed the performance standards for licensees in regulations and codes.

The ERA expects that deleting the performance standards will not significantly affect licensees or customers, in part because these standards are so widely applied in the industry that the services in Western Australia are designed to meet them in most circumstances. Also, licensees and customers already regularly agree to a supply arrangement outside the performance standards.

As part of the Water Licence Review 2019, the ERA retained the requirement for licensees to notify customers if their potable water supply falls outside of the pressure and flow ranges

²⁰ Economic Regulation Authority, 2020, *Water licence review 2019 – Final decision*, p. 15.

prescribed in the licence. This is an important protection as it allows customers to take remedial action, for example by installing a pressure reducing valve or a pump.

In its submission to the ERA's issues paper on the Water Licence Review 2019, DWER did not support the proposed removal of the performance standards. DWER submitted that the proposed removal constituted a policy decision by the ERA that would reduce protections for customers.²¹

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

Although the ERA is still of the view that setting performance standards should be a policy matter for Government, in its draft decision on the Water Licence Review 2019 the ERA committed to retaining the performance standards in Schedule 2 of water licences until DWER completed its review of the Water Act.²²

Progress update

In its final decision on the Water Licence Review 2019, the ERA confirmed its position from the draft decision to retain the performance standards in Schedule 2 of licences.²³ Once DWER has completed its review of the Water Act, the ERA will revisit whether it is still necessary for licences to include performance standards.

As there have been no changes to the Water Act or subordinate legislation to address this recommendation since the 2018/19 annual report on the operation of the water licensing scheme was published, the recommendation is carried forward into this report.

Recommendation

Performance standards for licensed water services should be prescribed in the *Water Services Act 2012* or its subordinate legislation.

2.5 Change of licensee ownership

The *Water Services Act 2012* does not allow the ERA to apply the Act's technical, financial and public interest tests to the new owner of an existing licensee, as it can for applicants for a new licence.

Reform

Section 15 of the Water Act authorises the ERA to approve the transfer of a licence from one entity to another.²⁴ Approval is subject to the ERA being satisfied that the applicant (transferee) has the necessary financial and technical resources to provide the services authorised by the licence and that granting the licence would not be contrary to the public interest.

²¹ Department of Water and Environmental Regulation, 2019, Submission to the ERA on its *Issues paper – Water Licence Review 2019*. ([online](#)) [accessed 20 November 2020].

²² Economic Regulation Authority, 2019, *Water licence review 2019 – Draft decision*, p.13.

²³ Economic Regulation Authority, 2020, *Water licence review 2019 – Final decision*, p.16.

²⁴ Each entity in the transfer has its own unique combination of company name and ABN.

A change in the ownership of a licensee where the licensee itself remains in operation under the same company name and ABN is not a transfer of the licence under section 15 of the Water Act.

Because a change of ownership is not a transfer under the Water Act, neither the existing owner nor the new owner of the licensee is required to seek the ERA's approval of the change of ownership. Consequently, the ERA cannot apply the same technical and financial capacity assessments or the Water Act's public interest test to the new owner as it did when the licence was granted to the original owner.

In the past, there have been instances when the ERA would have applied one or more of the financial, technical and public interest tests to the new owner of a licensee if it had the authority to do so.

Not being able to apply the regulatory tests applicable to a licence transfer to a change of ownership creates a risk that the licence is held by a person that does not possess the required experience and capacity to provide the service authorised by the licensee.

The Water Act should be amended to provide that ownership of a licensee can be transferred only with the ERA's approval, subject to the ERA being satisfied that the new owner meets the tests in section 15 of the Water Act.

Progress update

Since the 2018/19 annual report on the operation of the water licensing scheme was published, there have been no changes to the Water Act to address this recommendation. The recommendation is therefore carried forward into this report.

Recommendation

The *Water Services Act 2012*'s provisions on the transfer of a licence should be amended to allow the ERA to apply the Act's technical, financial and public interest tests to the new owner of an existing licensee.

3. Licensing scheme and ERA activities

This chapter provides an overview of the objectives of the licensing scheme and the licensing activities that the ERA has carried out during the year.

3.1 Objectives

A best practice licensing scheme will have clearly identified objectives that are administered by an independent and accountable regulatory authority. The regulator will perform its functions in a manner that ensures service standards are met, regulatory risk is as low as reasonably practicable and compliance costs are minimised.

The Water Act does not have an explicit set of objectives for the licensing scheme. While the ERA, licensees and customers would benefit from defined objectives being included in the Act, the ERA considers that to be effective the scheme will ensure that:

- Defined service standards for the supply of water, sewerage, irrigation and drainage services are met by licensees.
- Customers are treated fairly through the application of a customer protection regime.
- Licensees maintain effective asset management systems for their assets.
- Licensing is implemented only where it is the most appropriate form of intervention to address a risk of market failure, or the exercise of market power at the expense of the interests of consumers.
- The costs of licensing are kept to a minimum and do not outweigh the benefits.

To develop these objectives, the ERA has drawn on its experiences as the regulator of the water, electricity and gas licensing schemes. The ERA also takes into account the public interest matters that it is required to consider when making decisions, which are set out in sections 11 and 46 of the Water Act and section 26(1) of the *Economic Regulation Authority Act 2003*.²⁵

Apart from a small number of licence non-compliances, the scheme is currently meeting these objectives. There is always room for improvement, and one of the aims of this report is to identify areas of reform, so that the scheme can better meet these objectives at the least possible cost to government, industry and consumers.

The regulation of drinking water quality, price of water services and taking of ground or surface water fall outside the scope of the licensing scheme and are addressed by other legislation.

3.2 Licensing activities

3.2.1 Licensing scheme reviews

As the licensing scheme is established in the Water Act, it is the responsibility of the State Government to conduct legislative reviews of the scheme. The scheme was last reviewed in 2012, culminating in the licensing provisions in the *Water Services Licensing Act 1995* being

²⁵ The full text of sections 11 and 46 of the Water Act and section 26(1) of the ERA Act is in Appendix 1.

repealed and replaced by the Water Act in November 2013. DWER advised the ERA that it intended to review the Water Act soon.²⁶

The ERA is responsible for the licenses issued under the scheme. In accordance with good licensing practice, the ERA reviews the format and content of the licences at least every three years to ensure licences protect consumers effectively and meet current legislative requirements.²⁷ These reviews are not required by legislation; the ERA conducts the reviews to ensure that its licences are operating effectively. The reviews generally involve two rounds of public consultation to give the community and industry the opportunity to comment on licenses.

In 2019/20 the ERA completed its latest review of water licences. The ERA published its final decision on 20 April 2020.²⁸ The amendments to water licences approved by the ERA in its final decision came into effect on 1 May 2020.

3.2.2 Licensing activities during the year

During 2019/20, the ERA completed the following major activities, as regulator of the water licensing scheme:

- On 17 January 2020 the ERA published the consolidated performance data for water supply, sewerage and irrigation services for the period 2014 to 2019.²⁹ This is the first year that the ERA has published a consolidated set of data for water services. In previous years, the data for water and sewerage supply schemes with between 1,000 and 9,999 connections, less than 1,000 connections, and irrigation services were published separately.³⁰
- The 2018/19 annual report on the operation of the water licensing scheme and licensee compliance was published on 30 January 2020.³¹
- The ERA published its final decision on its water licence review on 20 April 2020.
- An updated Water Compliance Reporting Manual was published on 27 May 2020.³²
- Two licence applications were granted, and one licence was cancelled at the licensee's request.³³

3.2.3 Stakeholder engagement

The ERA seeks public comment on other regulatory reviews, such as reviews of its licences, regulatory guidelines and codes.

²⁶ Section 224 of the Water Act requires the Minister to carry out a review of the operation and effectiveness of the Water Act as soon as practicable after every fifth anniversary of its commencement. The full text of section 224 is in Appendix 1.

²⁷ The ERA may occasionally review licences more frequently, if required by amendments to codes or regulations.

²⁸ Economic Regulation Authority, 2020, *Water licence review 2019 – Final decision*.

²⁹ The [data](#) is available on the ERA website.

³⁰ Performance data for the 11 Western Australian water and sewerage supply schemes with over 10,000 connections is published each year by the Bureau of Meteorology in its [National performance report – urban water utilities](#).

³¹ The [report](#) is available on the ERA website.

³² The [manual](#) is available on the ERA website.

³³ The ERA's [decisions](#) on water licence applications are available on its website.

When relevant, ERA holds workshops and forums for licensees on its licensing activities. For example, in November 2018 the ERA held a workshop with licensees and auditors on the review of its *Audit and Review Guidelines – Water Licences*.

Most of the licensing activities outlined in section 3.2.2 involved public consultation.

4. Licensee compliance

This chapter provides an overview of the compliance framework for the licensing scheme and the compliance monitoring and enforcement activities undertaken by the ERA during the reporting year.

4.1 Compliance framework

The ERA has a compliance monitoring and enforcement strategy for water licensees, comprising:

- Periodic performance audits and asset management system reviews (see section 4.2).
- Annual compliance and performance (data) reports submitted by licensees.
- A requirement for licensees to notify the ERA when they become aware of a breach of a Type 1 licence obligation (see section 4.3).
- A Compliance Enforcement Policy.
- Regulatory guidelines and compliance reporting manuals published by the ERA to assist licensees in achieving compliance.

The Water Compliance Reporting Manual requires licensees to provide annual compliance reports to the ERA. To minimise the burden on the licensee, the report includes only non-compliances that were identified during the year. The scope of the performance audits includes reviewing the compliance reports submitted since the previous audit.

The Water Act requires the licensee to undertake independent audits of the effectiveness of the measures it has taken to meet the performance criteria specified in the licence. The Water Act also requires licensees to undertake independent reviews of the effectiveness of the licensee's asset management system.

The data collected in the annual compliance reports and audit reports is used to monitor and enforce compliance with licence conditions.

4.2 Operational audits and asset management reviews

The ERA has published *Audit and Review Guidelines: Water Licences*, which provide a comprehensive guide to the audit and review process.

The ERA uses a risk-based approach to operational audits and asset management system reviews to focus the audit or review on higher priorities, with less extensive coverage of medium and lower priorities. Auditors are required to apply the risk evaluation model described in the Audit Guidelines to determine the audit and review priorities.

The Audit Guidelines also require auditors to apply a common set of rating scales to rate licensees' compliance with the licence and the effectiveness of an asset management system. This enables the ERA to compare the performance of individual licensees and groups of licensees over time.

The ERA will increase the period between audits or reviews if the licensee has a strong compliance framework that is achieving a high level of compliance with the licence. Conversely, the period will be reduced (subject to the 24-month minimum in the Water Act) if an audit or review finds serious compliance problems. This ensures that regulatory resources

are focussed on licensees who need to improve compliance with their licence. This is also an incentive for licensees to comply with their licence and have an effective asset management system.

If an audit identifies compliance problems, the ERA actively monitors the actions taken by the licensee to address the cause(s) and return to compliance. In some instances, non-compliances may be so serious that the ERA will take enforcement action against a licensee using the powers available in the Water Act.

In 2019/20, seven audits and eight reviews of water licences were conducted:

- Four licensees had their audit and review periods left unchanged.
- Two licensees had their audit period left unchanged and their review period increased for improved performance.
- One licensee had its audit and review period increased for improved performance.
- One licensee had its review period left unchanged.

There were no trends or systemic issues identified in the audits and reviews that caused the ERA concern or required intervention.

4.3 Type 1 licence breaches

Licence obligations are classified as Type 1 if a breach of the obligation would cause major disruption to a customer.

A licensee must notify the ERA immediately when it becomes aware of a breach of a Type 1 licence obligation.

In 2019/20, the ERA did not receive any Type 1 licence breach notifications.

Appendix 1 - Legislative provisions referenced in report

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.

Water Services Act 2012

Section 3 - Definition of ‘customer’

customer, of a licensee, means a person to whom water services are provided by the licensee or who is entitled to the provision of water services by the licensee, other than a person who is a member of the licensee;

Section 11 Grant of licence

- (1) The Authority must grant a licence authorising the provision of one or more classes of water service if satisfied that —
- (a) the applicant —
 - (i) has, and is likely to retain, for each class of water service, the financial and technical ability to provide the service in the operating area or areas to be specified for the service; or
 - (ii) will acquire within a reasonable time after the grant, and is then likely to retain, that ability; and
 - (b) it would not be contrary to the public interest to do so.
- (2) For each class of water service authorised by a licence, the licence authorises the provision of the service —
- (a) in the operating area or areas of the licence specified for the service; and
 - (b) outside of the operating area or areas, unless the licence provides otherwise.

- (3) The Authority may specify in a licence water service works that are to be provided, operated or maintained for the provision of the water service authorised by the licence.
- (4) The Authority must take all reasonable steps to make a decision in respect of an application for the grant of a licence within 90 days after the application is made.

Section 12(1)(s) Conditions of licence

- (1) A licence may be subject to conditions which, without limiting that, may deal with the following —

....
 - (s) the licensee giving the Authority information relevant to the Authority's functions under this Act.

Section 13 Renewal of licence

- (1) An application for the renewal of a licence must be —
 - (a) made before the expiry of the licence; and
 - (b) made in a form approved by the Authority; and
 - (c) accompanied by the prescribed fee.
- (2) The Authority may renew a licence if the Authority is satisfied that —
 - (a) the applicant has, and is likely to retain, for each class of water service to be authorised by the licence, the financial and technical ability to provide the service in the operating area or areas to be specified for the service; and
 - (b) it would not be contrary to the public interest to do so.
- (3) The Authority must take all reasonable steps to make a decision in respect of an application for the renewal of a licence within 90 days after the application is made.
- (4) If —
 - (a) an application for the renewal of a licence is made; and
 - (b) the licence subsequently expires before the Authority makes a decision whether or not to renew the licence, the licence is to be taken to continue, under this subsection, until the Authority makes a decision whether or not to renew the licence.

Section 15 Transfer of licence

- (1) A licence cannot be transferred except —
 - (a) by the Authority; or (b) with the approval of the Authority.
- (2) The Authority may transfer or approve of the transfer of a licence if satisfied that —
 - (a) the person to whom the licence is to be transferred (the transferee) —

- (i) has, and is likely to retain, for each class of water service authorised by the licence, the financial and technical ability to provide the service in the operating area or areas of the licence specified for the service; or
 - (ii) (ii) will acquire within a reasonable time after the transfer, and is then likely to retain, that ability; and (b) it would not be contrary to the public interest to do so.
- (3) The Authority must not transfer a licence unless —
 - (a) the transferee agrees to the transfer; and
 - (b) if practicable — the licensee agrees to the transfer.
- (4) An application for the approval of the transfer of a licence must be —
 - (a) made by the transferee in a form approved by the Authority; and
 - (b) if practicable — accompanied by the licensee's written consent to the transfer of the licence; and
 - (c) accompanied by the prescribed fee.
- (5) The approval of a transfer of a licence may be subject to conditions.
- (6) The transfer of a licence does not alter the duration of the licence, but the Authority may, subject to section 14, extend its duration.
- (7) The Authority must take all reasonable steps to make a decision in respect of an application for the approval of the transfer of a licence within 90 days after the application is made.

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 18 Amendment or cancellation of licence – on application of licensee

- (1) A licensee may apply to the Authority at any time for the amendment or cancellation of a licence held by the licensee.
- (2) The Authority may amend or cancel the licence in accordance with the application if satisfied that it would not be contrary to the public interest to do so.
- (3) The Authority cannot amend a term or condition of a licence that was not determined by the Authority.
- (4) 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.

Section 24 Asset management system

- (1) It is a condition of every licence that the licensee must —
 - (a) provide for an asset management system; and
 - (b) give details of the system and any changes to it to the Authority; and
 - (c) at least once in every period of 24 months (or any longer period that the Authority allows), provide the Authority with a report, by an independent expert engaged by the Authority, as to the effectiveness of the system.
- (2) An asset management system must include the measures to be taken by the licensee for —
 - (a) the proper maintenance of the water service works of the licensee; and
 - (b) the provision and operation of the water service works specified in the licence and of other water service works necessary for the provision of the water service or services authorised by the licence.
- (3) The Authority must consult with the licensee before engaging an independent expert for the purposes of subsection (1)(c).
- (4) The Authority may recover its reasonable costs and expenses arising from the engagement and remuneration of an independent expert under subsection (1)(c) from the licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (5) The regulations may deal with the Authority reporting to the Minister in relation to reports by experts.

Section 25 Operational audit

- (1) It is a condition of every licence that the licensee must, at least once in every period of 24 months (or any longer period that the Authority allows), provide the Authority with an operational audit conducted by an independent expert appointed by the Authority.
- (2) An operational audit is an assessment of —

- (a) the effectiveness of measures taken by the licensee to meet the quality and performance standards required by the licence in relation to the provision of the water service or services authorised by the licence; and
 - (b) any other aspects of the provision of the water service or services that are nominated by the Authority in consultation with the licensee.
- (3) The Authority must consult with the licensee as to the appointment of an independent expert under subsection (1).
- (4) The Authority may recover its reasonable costs and expenses arising from the appointment and remuneration of an independent expert under subsection (1) from the licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (5) The regulations may deal with the Authority reporting to the Minister in relation to audits.

Section 31 Failure to comply with licence

- (1) If the Authority is satisfied that a licensee has failed to comply with a condition of a licence, the Authority may give a notice (a rectification notice) to the licensee requiring the licensee to rectify the failure within a specified period.
- (2) The rectification notice must set out —
- (a) the condition that the Authority is satisfied the licensee has failed to comply with; and
 - (b) what the licensee must do to rectify the failure; and
 - (c) the time within which the licensee must comply with the notice.
- (3) The rectification notice may be amended or revoked.
- (4) If the Authority is satisfied that the licensee has failed to comply with the rectification notice the Authority may do one or more of the following —
- (a) order the licensee to pay a monetary penalty determined by the Authority of up to —
 - (i) for an individual — \$30 000; and
 - (ii) for a body corporate — \$150 000;
 - (b) remedy the failure to comply that gave rise to the giving of the rectification notice;
 - (c) subject to section 17(2) — amend the licence under section 17.
- (5) Persons authorised by the Authority for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (4)(b).
- (6) The Authority may recover from the licensee a penalty imposed under subsection (4)(a) in a court of competent jurisdiction as a debt due by the licensee to the State.
- (7) A monetary penalty received by the Authority must be credited to the Consolidated Account.

- (8) The Authority may recover its reasonable costs and expenses of any action taken under subsection (4)(b) from the licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (9) Section 17(3) does not have effect in relation to an amendment of a licence for the purposes of subsection (4)(c).

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 126 Water service charges payable despite change in ownership of land or liability to prosecution

- (1) Despite any change in the ownership of land, statutory water service charges and alternative water service charges (referred to in section 75(2)(c)), including interest on overdue amounts, remain payable and are recoverable from the owner of the land for the time being while the charges remain unpaid.

Section 207 Functions of the Authority

The functions of the Authority under this Act are —

- (a) to administer the licensing scheme provided for in Part 2; and
- (b) to monitor and report to the Minister on the operation of that licensing scheme and on compliance by licensees with their licences; and
- (c) to monitor and report to the Minister on —
 - (i) the performance of the water services industry and of the participants in that industry; and
 - (ii) the performance of providers of water services,and, for the purposes of such monitoring, to consult with interested groups and persons; and
- (d) to inform the Minister about any material failure by a licensee to meet operational standards or other requirements of its licence or licences; and
- (e) to inform the Minister about any material failure by a water service provider to comply with section 5; and
- (f) to monitor compliance with decisions and directions of the water services ombudsman under an approved scheme; and
- (g) the other functions conferred on the Authority under this Act.

Section 224 Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after every 5th anniversary of its commencement, and in the course of that review the Minister must consider and have regard to —
 - (a) the adequacy of the penalties imposed under this Act; and
 - (b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister must prepare a report based on the review carried out under subsection (1) and, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

Water Services Regulations 2013**Regulation 7 Asset management system reports and operational audits**

- (1) This regulation applies to a report or audit provided to the Authority under section 24(1) or 25(1) of the Act.
- (2) The Authority must, within 2 months of being provided the report or audit, give the Minister —
 - (a) a copy of the report or audit; and
 - (b) a report prepared by the Authority which sets out —
 - (i) the Authority's opinion on the findings in the report or audit; and
 - (ii) what recommendations the Authority has made or proposes to make, and what actions the Authority has taken or proposes to take, in response to the report or audit.

Water Services Code of Conduct (Customer Service Standards) 2018**Clause 5(1) 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.

...

Clause 28(3) Assistance for customers experiencing payment difficulties

- (3) When formulating a payment plan or other arrangement for a customer the licensee must take into account —
 - (a) the customer's capacity to pay the bill; and
 - (b) in the case of a bill for usage, how much water has been supplied or wastewater has been discharged in previous billing periods.

Clause 30(3) Assistance for customers experiencing financial hardship

- (3) When formulating a payment plan or other arrangement for a customer the licensee must take into account —
- (a) the customer's capacity to pay the bill; and
 - (b) in the case of a bill for usage, how much water has been supplied or wastewater has been discharged in previous billing periods.

Rates and Charges (Rebates and Deferments) Act 1992**Section 3 Definition of 'final payment day'**

final payment day for a Water Corporation charge, in relation to a person, means —

- (a) the 50th day after the date of the notice requiring payment for that charge; or
- (b) a day, determined by the Water Corporation in relation to the person, that is after the day referred to in paragraph (a) but not more than 70 days after that day;

Section 40 Rebates to registered persons

- (4) The liability of a person to whom this section applies for payment of a prescribed charge may, subject to this Act, be satisfied by the payment of a rebated amount —
- (a) in the case of a Water Corporation charge — by the final payment day or, if that person has been allowed an extended period under subsection (3A), before the end of that period; or
 - (b) in the case of any other prescribed charge — before the end of the charged period or, if that person has been allowed an extended period under subsection (3A), before the end of that period.
- (3A) If the Minister is satisfied that a person to whom this section applies has, because of exceptional circumstances, failed to pay the rebated amount by —
- (a) in the case of a Water Corporation charge — the final payment day; or
 - (b) in the case of any other prescribed charge — the end of the charged period, the Minister may allow that person an extended period within which the payment may be made.

Appendix 2 – Licences and licensing costs

Licences and licensees

A list of current water licensees can be found on the ERA's website, along with copies of the current licences.³⁴

Table 1 shows the total number of licensed water services as at 30 June 2020.

A water licence can authorise the supply of one or more of the following services: potable water, non-potable water, sewerage, drainage and irrigation. Some licensees supply more than one of these services.

Table 1: Water licences by service 2019/20

Classification	Number of licensed water services	Share (%)
Water supply (potable)	12	24
Water supply (non-potable)	16	32
Sewerage	16	32
Irrigation	4	8
Drainage	2	4
Total	50	100

Licensing costs

The *Economic Regulation Authority (Licensing Funding) Regulations 2014* set out the fees and charges that licensees must pay to the ERA. The ERA recovers its costs to administer the licensing scheme from licensees through an annual licence fee and a quarterly standing charge. The regulations are the responsibility of the Treasurer.

The ERA's costs to administer the water licensing scheme over the past three years are set out in Table 2.

Table 2: ERA licensing costs

Costs per year (\$)		
2017/18	2018/19	2019/20
520,080 ³⁵	800,700	633,378

The annual fee for water licences is a fixed amount of \$2,885, which is set by the regulations.

³⁴ The licensees and licences are available on the ERA's [Licence Holders](#) webpage.

³⁵ There was a substantial reduction in the ERA's licensing costs in 2017/18, because other divisions of the ERA incurred more overheads and costs that year due to the projects they carried out, such as the assessment of Western Power's network access arrangement for the 2017-22 regulatory period.

Licensees are required to pay a standing charge every quarter for the ERA to recover the costs it incurs in performing its licensing functions.

For the ERA to calculate the standing charge, licensees must report annually on the number of units relevant to the licence (Table 3). For water licensees, the number of units is the number of customers they have. The number of units reported by the licensee will determine the standing charge that the licensee must pay.³⁶

For example, if the ERA's water licensing costs to be recovered from the standing charge is \$1 million and a licensee has 500,000 customers from a total of 1 million customers supplied by all licensees, its annual standing charge is \$500,000. This is because the licensee has 50 per cent of the total number of customers supplied by all licensees within the licensing scheme. If a licensee provides more than one service to its customers, such as potable water supply and sewerage services, the customer is only counted once.

Table 3: Licensee standing charge per customer per year

	2017/18	2018/19	2019/20
Licensee's cost per customer (\$)	0.39	0.60	0.47

The cost per unit changes from year to year due to several factors, including:

- The proportion of the ERA's licensing resources that are allocated to each licensing scheme (electricity, gas or water) each year. For example, costs incurred in the water licensing scheme in 2018/19 were higher than in 2019/20 due to the Water Corporation's operational audit and the triennial water licence review taking place in 2018/19.
- The allocation of the ERA's overheads across its divisions.³⁷ For example, if there is an increase in staff one year in another area of the ERA to address a higher workload, then a lower percentage of the ERA's overheads are allocated against licensing functions.

³⁶ The regulations require the ERA to calculate the total number of units reported by licensees for each service (called UT). The costs payable by each licensee determined by the formula: $C \times (UL/UT)$, where C is the total cost for the service and UL is the number of units reported for the licence.

³⁷ Some licensing activities are annual, while others are biennial or triennial, which results in fluctuations in the amount of staff resources needed to complete the activities each year.