



Department of Water
Government of Western Australia

Our ref: WT 3995
Enquiries: Don Crawford 6364 6815

Mr Peter Kolf
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Economic Regulation Authority
PO Box 8469
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Attention: Mr Mick Geaney

Dear Mr Kolf

Review of Water Services Licences: Recommendation Report

The Department of Water thanks the Economic Regulation Authority for the opportunity to provide comments on the Recommendation Report - Review of Water Services Licences. The Department supports a consistent approach to utility regulation and a water services licensing regime that is not overly prescriptive but ensures the interests of customers and the wider public interest are safeguarded.

The Department is currently undertaking a major reform of water service legislation. The Water Services Bill (Bill), to be introduced to the Parliament by the end of this year, will modernise and consolidate existing water services statutes relating to the provision and regulation of water services. The Bill will introduce significant changes to the powers and regulation of water service providers, including the streamlining of regulatory arrangements particularly in the areas of extensions to enactments and price regulation.

You would also be aware from drafts of the Bill previously provided to the Authority by the Department that the introduction of code provisions and other powers will give the Minister the ability to prescribe water service licence conditions that, to date, have been set by the Authority, though the Authority will also be given the ability to make codes on certain matters. Other major changes include provisions for a supplier of last resort which will allow the Authority to appoint a supplier of last resort in a designated area, and the creation of an Energy and Water Ombudsman scheme to deal with customer complaints.

Given the scope and timing of the legislative change being undertaken and the consequences for water services licensing, the Department considers that making any changes to the format and content of water services licences would be best delayed until the new legislation is in place. It may be disruptive for licensees and lead to confusion amongst licensees and other stakeholders when the new arrangements take effect upon the introduction of the new Bill.

Specific comments on the proposed water services licence are outlined below:

- One recommendation proposes that the current licence structure be retained whereby different classes of water services provided by a licensee are amalgamated into a single licence for that licensee. The Department believes that the Government's public interest objectives in licensing water service providers will be better served by requiring that licensees hold a separate licence for each different class of water service operated. It is intended that the Bill will continue to reflect this.

- A number of the definitions in the proposed water services licence are inconsistent with those currently drafted for the Bill. When the final definitions are ultimately decided and the Bill is enacted, licensees will need to overcome the confusion over the changes proposed in the licence review as well as the changes anticipated with the introduction of the new Bill.
- The Department notes the management of drinking water quality will be administered through the proposed Memorandum of Understanding (MoU) between licensees and Department of Health. The MoU, intended as a legally binding document, sets out the minimum drinking water quality standards in accordance with the applicable Australian Drinking Water Guidelines. While the Department supports in-principle the notion of a MoU in eliminating dual regulation between the Health Department and the Authority, there remains concern over the legal enforceability of the proposed Memoranda, the provisions contained within and the practicality of the MoU in regulating potable water supply services.
- Section 32(1) of the *Water Services Licensing Act 1995* prescribes that it is a condition of a licence to provide water services and undertake, maintain and operate water services works specified in the licence. The Authority's recommendation to delete the clauses in the existing licence that specify the section 32(1) obligations on licensees would contradict the requirements of the Act. Therefore, the Department counsels against the deletion of the following clauses from existing licences:
 - Methods or principles to be applied in the provision of water services; and
 - Obligations to customers: availability and connection to services (Schedule 5).

In addition, the Department observes that the map on page 51 of the Recommendation Report showing water services controlled areas is incorrect as it consists of water and sewerage controlled areas that have been repealed for some considerable time.

Should you require any further information, please contact Mr Don Crawford, Manager Industry Support, on 6364 6815.

Yours sincerely

John Loney
Director, Policy and Planning Division

15 May 2008