

# Decision on Review of Water Services Licences - Amendment to all Water Operating Licences and the release of the Final Water Compliance Reporting Manual

6 August 2008

Economic Regulation Authority



WESTERN AUSTRALIA

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## DECISION

1. On 4 April 2008, the Authority approved the release of a report entitled 'Recommendation Report - Review of Water Services Licences' (Recommendation Report) and the release of a draft Water Compliance Reporting Manual (WCRM). The Recommendation Report included a new form water operating licence template.
2. The Authority, taking account of the public submissions received and pursuant to section 31 of the Act, approves the amendment by substitution of all water operating licences in line with the new form water services operating licence template.
3. The Authority designates that all operating areas in the new operating licences are non-exclusive.
4. The Authority, taking account of the public submissions received, and pursuant to Section 24(1) of the Act, approves the final form of the Water Compliance Reporting Manual.

## REASONS

1. The period for public submissions closed on 16 May 2008.
2. The Recommendation Report presented proposals to standardise and improve the terms and conditions of operating licences consistent with electricity and gas licences and included a new draft operating licence template. Overall, feedback on the Recommendation Report was positive.
3. The Authority received three submissions on the Recommendation Report, which have been published on the Authority's web site. Two respondents sought a delay in the issuance of new form licences until the proposed Water Services Bill is passed into legislation to reduce any potential confusion for licensees. Rio Tinto did not support the use of a Memorandum of Understanding (MOU) to address potable (drinking) water quality standards and sought further information on the proposal.
4. The Authority, in consideration of this feedback, took account of the following factors.
  - The existing operating licence format has been in place since 1996 and has not been reviewed throughout that time.
  - The structure of the new licence is based on the electricity and gas licence template and is in keeping with best practice utility licensing principles.
  - It is expected that any changes required to the proposed water licence template, due to the introduction of the proposed Water Services Bill 2008, are not expected to be proclaimed until at least 2010, and any such changes could easily be accommodated due to the licence schedule structure.
  - The Authority considers that further delay in the implementation of these licence reforms poses a higher regulatory risk to licensees than some possible future confusions as a result of the introduction of the new Water Services Bill 2008.
  - The Authority notes that there is uncertainty about which government agency has the responsibility and legal authority to set drinking water quality standards. In practice, this responsibility has been shared between the Department of Health and the Authority. The Authority considers that this lack of clarity in the legislation gives rise to uncertainty and warrants amending the legislation to clearly specify where the responsibility lies.
  - The Authority notes that MOUs between the Department of Health and potable water licensees are voluntary and are seen by these licensees as an appropriate instrument to support compliance and reporting on agreed drinking water quality standards.
  - The Authority considers that the use of MOUs and the conditions imposed by the new licence template at this time in framing drinking water quality standards is a pragmatic solution.

On the basis of these factors, the Authority has decided to proceed with the new licence format.

5. In April 2005, the Authority, in its final decision on the application by the Water Corporation to align its metropolitan operating area boundary for drinking water and sewerage services with that of the WA Planning Commission's Metropolitan Region Scheme boundary, determined that increased competition in water markets is a desirable outcome, because increased competition is more likely to increase operational efficiency and further the interests of water consumers. (45-2005).
6. The Authority indicated in its 2005 decision that a non-exclusive licence is something of a misnomer as the operating area of a licence may be amended pursuant to section 31 of the Act. It is also noted that where nationally significant, Part IIIA of the *Trade Practices Act 1974* (Cth) provides for parties to have access to those operating areas.
7. The Authority also considered whether other operating licences with 'sole provider' operating areas (whether belonging to the Applicant or to other licensees) should be amended to a non-exclusive basis. At the time, the Authority decided that it was not necessary to amend other operating licences to be non-exclusive, as the Authority was only considering one specific application. However, the Authority decided that any applications for an amendment submitted in the future would be considered on the same basis as the Water Corporation's application. Consequently, the Authority has decided to designate all operating areas in the new licences to be non-exclusive.
8. In coming to its decision, the Authority considered the public interest as required by section 31(1a) of the Act. The Authority is satisfied that amendment of all operating licences by licence substitution would not be contrary to the public interest.
9. The Water Compliance Reporting Manual (WCRM) is similar in format to the existing gas and electricity compliance reporting manuals and specifies a complete list of the compliance and reporting obligations relating to the new proposed water licences. It is also consistent with the National Water Commission's Performance Indicators formulated under the National Water Agreement.
10. Feedback on the draft WCRM was also positive with only minor changes to format and content recommended.
11. As required under section 31(4b) of the Act, the Authority will publish a notice of its approval of the licence amendments in the *Government Gazette* as soon as practicable.

LYNDON ROWE  
**CHAIRMAN**