

Decision on Amendment to:

Aqwest – Bunbury Water Board
Operating Licence No.2

Busselton Water Board
Operating Licence No.3

Rottnest Island Authority
Operating Licence No.10

Water Corporation
Operating Licence No. 32

Hamersley Iron Pty Ltd
Operating Licence No.33

21 August 2009

Economic Regulation Authority

 WESTERN AUSTRALIA

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DECISION

1. The Economic Regulation Authority (Authority) has approved an amendment to Operating Licences 2 (Aqwest – Bunbury Water Board), 3 (Busselton Water Board), 10 (Rottnest Island Authority), 32 (Water Corporation) and 33 (Hamersley Iron Pty Ltd) under section 31 of the *Water Services Licensing Act 1995* (Act). The amendment, to clause 9.1, removes the requirement for a licensee to seek the approval of the Authority for an extension of time, if the licensee fails to put in place a Memorandum of Understanding (MoU) with the Department of Health (DoH), within 3 months of the commencement date of the licence.
2. The application for these licence amendments was made pursuant to section 31 of the *Water Services Licensing Act 1995* (Act).
3. Pursuant to section 31 of the Act, the Authority approves the amendments of Operating licences 2 (Aqwest – Bunbury Water Board), 3 (Busselton Water Board), 10 (Rottnest Island Authority), 32 (Water Corporation) and 33 (Hamersley Iron Pty Ltd).

REASONS

1. MoUs were developed to allow the regulator of water quality standards (DoH) and service providers, a flexible instrument to oversee their responsibilities under the Australian Drinking Water Guidelines 2004.
2. Clause 9.1 of the new operating licence requires a licensee intending to provide potable water to enter into a MoU with DoH as soon as practicable from the date of commencement of the licence, but no later than 3 months after the commencement date without the approval of the Authority.
3. The Authority has provided extensions of time to Busselton Water, Hamersley Iron, and the Rottnest Island Authority due to delays on the part of the DoH to review draft MoUs. The DoH has indicated that further delays regarding their review and finalisation of these draft MoUs is anticipated.
4. If DoH is comfortable with delays relating to the finalisation of a MOU, then the Authority's approvals of extensions of time is merely a procedural process that serves no regulatory benefit.
5. Clause 9.1, in its current form, places all responsibility on the licensee for establishing a MoU, even when it is demonstrated that issues preventing them to do so, are beyond the licensee's control. The Authority concludes that clause 9.1 in its current form is unworkable.
6. The Authority has therefore revised clause 9.1 as follows: *Where the licensee is, or intends to, provide potable water, the licensee must commence negotiations for a MOU with the Department of Health as soon as practicable after the commencement date.*
7. As this is a minor amendment, the Authority did not seek public submissions on the amendment.
8. In its consideration of the licence amendment, the Authority considered the public interest in respect to the proposal as required by section 31(1a) of the Act. The Authority is satisfied that approval of the amendment would not be contrary to the public interest.
9. The Authority has therefore decided to amend Operating Licence 2, Operating Licence 3, Operating Licence 10, Operating Licence 32 and Operating Licence 33 by removing the requirement for these licensees to seek approval of the Authority if it fails to put in place a MoU with DoH within the required timeframe.
10. As required under section 31(4b) of the Act, the Authority will publish a notice of its approval of the licence amendment in the *Government Gazette* as soon as is practicable.

LYNDON ROWE
CHAIRMAN