

# RECOMMENDATION REPORT - REVIEW OF WATER SERVICES LICENCES

MARCH 2008

Economic Regulation Authority



WESTERN AUSTRALIA



Draft

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# 1 Executive Summary

The Economic Regulation Authority (**Authority**) is undertaking a review of water services licences (operating licences), granted pursuant to the *Water Services Licensing Act 1995* (**Act**). The review is being undertaken consistent with best practice design for regulation.

With the establishment of the electricity licence regime in January 2005 and the review of gas licences in 2006/2007, there currently exist material differences between the terms and conditions of water licences and gas and electricity licences.

Consequently, the Authority proposes to modernise operating licences by making licence terms and conditions consistent, to the extent practical, with those for electricity and now gas as well as recognising water licensing developments occurring at a national level.

As part of its Review of Water Services Licences (Review), the Authority has proposed 60 recommendations to improve the efficiency and effectiveness of operating licences. These recommendations are discussed in detail in Part 5 of this paper. In general, the recommendations propose that operating licence terms and conditions are amended to more closely align with other utility services in electricity and gas.

The Authority established a Water Industry Reference Group (**Reference Group**), which includes representatives of existing water licensees, the Department of Water and the Western Australian Council of Social Service Inc. (WACOSS) to assist in the development of this paper.

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## 2 Review Scope, Objectives & Process

### 2.1 Scope

The scope of the Review is to examine:

- terms and conditions contained within:
  - water supply services operating licences;
  - sewerage services operating licences;
  - irrigation services operating licences; and
  - drainage services operating licences, (Part 5);
- the need for non-exclusive operating areas (Part 6);
- the need for licence exemptions (Part 7);
- applicable licence fees (Part 8); and
- key differences between water and electricity licensing (legislative) frameworks (Part 9).

### 2.2 Objectives

The Authority's review objectives are to:

- reflect the current regulatory environment and promote consistent licence regulation across the utility sector;
- improve consistency between operating licences;
- enhance consumer protection, including providing scope for improved compliance;
- reduce the regulatory burden on business, particularly by removing spent, redundant or inappropriate licence provisions and thereby reducing compliance costs; and
- utilise best practice principles of utility licensing.

#### 2.2.1 Reflecting current regulatory environment and promoting consistent licence regulation across the utility sector

In July 2003, the Government commenced a comprehensive reform of the State's electricity market, including establishing a regulatory framework applicable to the supply of electricity.

A new electricity licence regime was established under the *Electricity Industry Act 2004* (EIA 2004) in January 2005 with the first licence issued in June 2005. By 1 July 2006, 39

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electricity licences were granted providing for the generation, transmission, distribution and retail of electricity.

The electricity licence framework developed by the Authority involved extensive public consultation. Effectively, this framework consists of:

- application guidelines (electricity, gas and water);
- template electricity generation, transmission, distribution, generation and integrated regional licences;
- public consultation guidelines (electricity, gas and water);
- customer service charter guidelines (electricity, gas and water);
- licence compliance reporting guidelines (generic);
- compliance reporting manuals (electricity, gas being drafted);
- asset management guidelines (electricity, gas and water licences); and
- guidelines for conducting operational audits and asset management system reviews (electricity, gas and water licences).

Electricity licences are far less prescriptive than water licences. The electricity model is characterised by the use of extrinsic industry codes which are imposed by Government as licence conditions.

Once codes are imposed, the Authority monitors and enforces code compliance through the licence framework. Electricity industry codes relevant to the licence framework established to date are:

- *Code of Conduct for the Supply of Electricity to Small Use Customers 2004*;
- *Electricity Industry Customer Transfer Code 2004*;
- *Electricity Industry Metering Code 2005*; and
- *Electricity Industry (Network Quality and Reliability of Supply Code) 2005*.

As a result of codification, the electricity licences typically deal with procedural or compliance matters such as transfer, cancellation and amendment of licence, asset management, performance audits and performance standards.

In contrast, operating licences are individually crafted and usually combine several water services types in the one instrument with many of the prescribed requirements in the licence.

The Department of Water (DoW) is undertaking a review of the *Water Services Licensing Act 1995* (Act) and the Authority has been provided with a draft copy of the proposed *Water Services Bill 2007*. The proposed licensing structure for water outlined in this report is consistent with this proposed legislation. It is acknowledged that when the new Act is finalised, the Authority may be required to make minor refinements to the water licence framework.

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It is a key objective of the Review to modernise the operating licences consistent with Western Australian electricity licences in order to reflect current regulatory best practice.

### **2.2.2 Improve consistency between operating licences**

At present, many inconsistencies exist between operating licences. For example there are significant differences in licences about provisions for Customer Complaints and Customer Consultation. It is proposed that, to the extent possible, differences between the licences (both within and between classifications) be eliminated.

This will ensure that all water supply services, sewerage services, irrigation services and drainage services operating licences will generally contain the same licence terms and conditions and follow the same format.

### **2.2.3 Enhancing consumer protection, including providing scope for improved compliance**

The Authority proposes to enhance consumer protection, including improving compliance, through consistency of utility regulatory practice. The Authority has therefore established consistent guidelines on:

- utility licence applications;
- public consultation processes;
- customer service charter approval processes;
- performance audit and asset management processes; and
- performance and financial reporting.

Standardisation of licensing arrangements:

- promotes confidence in the regulatory regime by providing for consistency of application across the utility sector;
- minimises regulatory costs by avoiding duplication of compliance activities where possible;
- enables regulatory capability to be developed within industry and the Authority, which is transferable across the utility sector; and
- provides for consistency of supply arrangements and standards applicable to utility customers such that one type of customer does not have lesser rights than another.

### **2.2.4 Reducing the regulatory burden on business, particularly by removing spent, redundant or inappropriate licence provisions and reducing compliance costs**

The majority of existing operating licences were formulated and granted by the Office of Water Regulation in 1996 and therefore do not reflect contemporary regulatory practice. Although amendments have been made to the operating licences, there has not been a

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general review of the format and content of operating licences since they were initially issued.

With the passage of time and the reform of the utility market, current operating licences contain a number of provisions, which the Authority considers are either spent, redundant or inappropriate.

## **2.2.5 Utilise best practice principles of utility licensing**

Best practice utility licensing is guided by a number of essential principles. The overall objective of licensing is to ensure that consumers are protected in circumstances of market failure in a manner that demonstrates that the benefits of regulation outweigh the costs.

Effective licensing requires an independent Authority that is fully accountable to manage the licensing functions.

The focus of licensing is on the requirement for maintaining service standards while ensuring the minimization of regulatory risks and compliance costs. Service standards are maintained through consumer focused processes, the setting of consistent standards and customer protection measures and through comprehensive consultative processes.

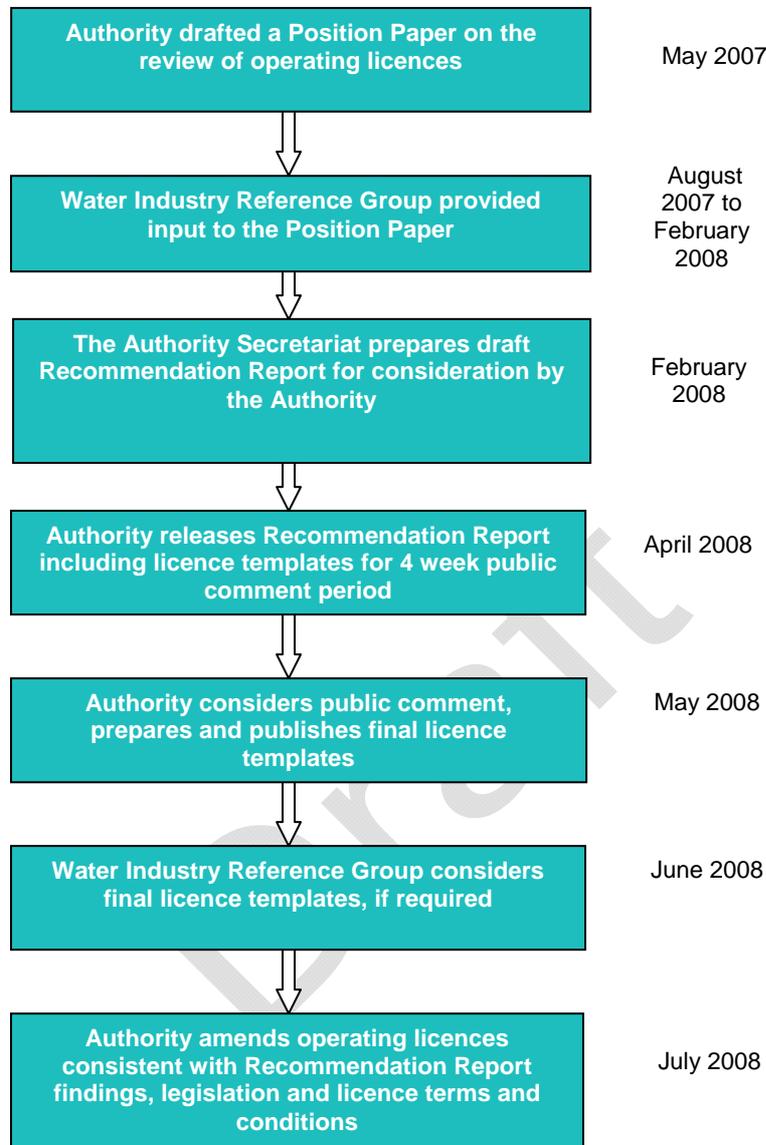
Regulatory risks are minimized when it is demonstrated that decisions are predictable, consistent, timely, transparent and consulted. Compliance costs are minimised through the use of simple and targeted language, when decisions are consistent with other laws and integrated across jurisdictions, when licence instruments are flexible and consultative mechanisms with licensees are effective.

The review of water services licences should take these best practice principles into account when revising the licence instruments. The Authority has developed a paper on Best Practice Utility Licensing and this paper can be located at <http://www.era.wa.gov.au/2/282/51/publications.pm>.

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## 2.3 Water Operating Licence Review Process

Figure 1: Process for reviewing and amending operating licences



The Position Paper outlined the issues and proposals put forward by the Secretariat and were considered by the Water Industry Reference Group.

The Reference Group was chaired by the Secretariat of the Authority and its membership consisted of:

- existing licensees (Water Corporation, Aqwest, Busselton Water Board, Harvey Water, Shire of Denmark, Shire of Wyalkatchem and Shire of Yilgarn);
- Department of Water; and
- WACOSS.

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The Reference Group's role and function was to provide advice and comment to the Authority Secretariat on proposed reforms.

### 3 National Water Licence Developments

As part of the review of operating licences, the Authority also contacted the following bodies, in their respective States:

- South Australian Water;
- Department for Treasury and Finance, South Australia;
- Essential Services Commission South Australia (ESCOSA);
- Essential Services Commission Victoria (ESC);
- Independent Pricing and Regulatory Tribunal (IPART) New South Wales; and
- Department of Natural Resources and Water, Queensland.

Key outcomes of those discussions are set out below.

There is no consistent approach to water services regulation across Australia, however there is a framework for the standardisation of reporting across the water sector.

The essential nature of water supply and the impact of a drying climate are likely to increase regulatory requirements that are flexible and dynamic and can respond to changing environmental and economic circumstances. Each state is adopting a unique approach to meet these challenges.

Licensing in some states is seen as an efficient and minimally necessary way to monitor and enforce water services standards and promote compliance.

Consultation with Eastern States' regulators during the Review of Gas Licences revealed the following trends and practices:

- "Light-handedness" approach to licence terms and conditions combined with the use of codes of practice developed in collaboration with industry and other key stakeholders.
- A move to national streamlined reporting requirements.
- Use of regulatory forums to ensure open communication and dialogue between regulators on a regular basis.

#### 3.1 Conclusion

The Authority is of the view that there is a need for operating licensing regulations, these regulations being the minimum necessary to achieve regulatory objectives. Furthermore, the regulatory framework in water services needs to be consistent with frameworks across other utility sectors.

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## 4 Legislative Framework

### 4.1 Water Services Licensing Act 1995

Upon enactment of the *Economic Regulation Authority Act 2003 (ERA Act)*, responsibility for the administration and enforcement of the water operating licence regime was transferred from the Office of Water Regulation (**OWR**) (Government) to the Authority (independent regulator). The effective date for this transfer was 19 March 2004.

An operating licence is required for participants in the water industry who intend to, or currently, supply water in a controlled area or part of a controlled area unless otherwise exempt.

Controlled areas are constituted by the Governor<sup>1</sup>. A map of the water services controlled areas is available on the Authority's web site.

Operating licences are categorised as follows:

- water supply services (includes potable (drinking water) and/or non-potable water supply);
- sewerage services;
- irrigation services; and
- drainage services.

The Authority's functions under the Act<sup>2</sup> are:

- to administer the licensing scheme provided for in Part 3;
- to monitor and report to the Minister on the operation of that licensing scheme and on licensee compliance;
- to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence;
- to monitor –
  - (a) the performance of the water services industry and those participating in that industry; and
  - (b) the performance of the providers of water services, and, for the purposes of such monitoring, to consult with interested groups and persons;and
- the other functions conferred on the Authority by the Act.

Under the Act the Governor has responsibility for:

- declaration of controlled areas;
- licence cancellations;
- licence exemptions; and
- regulations made under the Act;

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<sup>1</sup> Refer section 11 of the Act.

<sup>2</sup> Refer section 4 of the Act.

Under the Act, a person aggrieved by a decision of the Authority may apply to the State Administration Tribunal for a review of licence decisions.

## 4.2 Existing licensees

Currently, 38 operating licences have been granted to 30 licensees. Some of these operating licences combine 2 or more licence types. In total there are 59 individual licence types:

**Table 1: Water Operating Licensees**

	Licensee	Licence Number	Version	Date of Grant
<b>WATER SUPPLY</b>				
<i>Potable</i>				
1.	Aqwest - Bunbury Water Board	2	5	11/05/2005
2.	Busselton Water Board	3	5	30/11/2004
3.	Hamersley Iron Pty Ltd	33	3	28/07/2004
4.	Rottneest Island Authority	10	4	01/12/2004
5.	Water Corporation	32	39	02/02/2007
<i>Non-potable</i>				
6.	City of Kalgoorlie Boulder	4	4	30/11/2004
7.	Gascoyne Water Services	38	2	01/12/2004
8.	Harvey Water (SWIMCO)	31	4	19/10/2004
9.	Ord Irrigation Cooperative	37	2	15/10/2004
10.	Preston Valley Irrigation	9	3	01/10/2004
11.	Shire of Brookton	12	6	30/11/2004
12.	Shire of Coolgardie	13	5	04/11/2004
13.	Shire of Dalwallinu	14	5	22/10/2004
14.	Shire of Denmark	39	2	01/06/2006
15.	Shire of Dowerin	15	5	30/11/2004
16.	Shire of Dumbleyung	16	4	28/09/2004

	Licensee	Licence Number	Version	Date of Grant
17.	Shire of East Pilbara	17	3	15/11/2004
18.	Shire of Gnowangerup	11	5	23/12/2004
19.	Shire of Goomalling	18	4	03/11/2004
20.	Shire of Jerramungup	19	4	28/09/2004
21.	Shire of Kent	20	4	28/09/2004
22.	Shire of Koorda	21	4	01/10/2004
23.	Shire of Lake Grace	22	4	15/11/2004
24.	Shire of Moora	23	4	28/09/2004
25.	Shire of Morawa	24	4	30/11/2004
26.	Shire of Ravensthorpe	26	6	06/07/2005
27.	Shire of Victoria Plains	34	4	30/11/2004
28.	Shire of Wickepin	27	4	15/11/2004
29.	Shire of Yilgarn	30	4	30/11/2004
30.	Water Corporation	32	39	02/02/2007
<b>IRRIGATION</b>				
31.	Gascoyne Water Services	38	2	01/12/2004
32.	Harvey Water (SWIMCO)	31	4	19/10/2004
33.	Ord Irrigation Cooperative	37	2	15/10/2004
34.	Preston Valley Irrigation	9	3	01/10/2004
35.	Water Corporation	32	39	02/02/2007
<b>SEWERAGE</b>				
36.	City of Kalgoorlie Boulder	4	4	30/11/2004
37.	Hamersley Iron Pty Ltd	33	3	28/07/2004
38.	Rottnest Island Authority	10	4	01/12/2004
39.	Shire of Brookton	12	6	30/11/2004
40.	Shire of Coolgardie	13	5	04/11/2004
41.	Shire of Dalwallinu	14	5	22/10/2004

	Licensee	Licence Number	Version	Date of Grant
42.	Shire of Dowerin	15	5	30/11/2004
43.	Shire of Dumbleyung	16	4	28/09/2004
44.	Shire of East Pilbara	17	3	15/11/2004
45.	Shire of Gnowangerup	11	5	23/12/2004
46.	Shire of Goomalling	18	4	03/11/2004
47.	Shire of Jerramungup	19	4	28/09/2004
48.	Shire of Kent	20	4	28/09/2004
49.	Shire of Koorda	21	4	01/10/2004
50.	Shire of Lake Grace	22	4	15/11/2004
51.	Shire of Moora	23	4	28/09/2004
52.	Shire of Morawa	24	4	30/11/2004
53.	Shire of Ravensthorpe	26	6	06/07/2005
54.	Shire of Victoria Plains	34	4	30/11/2004
55.	Shire of Wickpin	27	4	15/11/2004
56.	Shire of Yilgarn	30	4	30/11/2004
57.	Water Corporation	32	39	02/02/2007
<b>DRAINAGE</b>				
58.	Rottneest Island Authority	10	4	01/12/2004
59.	Water Corporation	32	39	02/02/2007

There is a clear inconsistency in the way licences are combined and issued compared to licences granted in the energy sector. For example, the Water Corporation has one operating licence combining 4 types of water services.

However, the Act allows for this. Section 15 of the Act states:

- (i) Operating licences are classified as follows –
  - (a) Operating licence (water supply services);
  - (b) Operating licence (sewerage services);
  - (c) Operating licence (irrigation services); or

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(d) Operating licence (drainage services).

- (ii) An operating licence is to be designated by reference to one or more of the classifications specified in subsection (1).

In view of this, the proposal is to retain the current licence structure whereby different water services types are amalgamated into one single operating licence. However, the licences themselves will be restructured by including a generic set of terms and conditions in the body of the licence (applicable to each licence type) and individual terms and conditions (specific to the service type provided) within the attached Schedules.

The following provides a schematic overview of the proposed new licence structure:

Common clauses	Schedule 1	Schedule 2	Schedule 3	Schedule 4	Schedule 5	Schedule 6
Applicable to all licences (based on electricity licence template)	Licence details (for each service type)	Operating areas	Customer Standards	Service Standards	Reporting requirements	Miscellaneous Provisions

Note: References to existing or new Codes will be located in Schedule 4.

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## 5 Review of Water Operating Licence Terms and Conditions

### 5.1 Definitions<sup>3</sup>

#### Summary

The “definitions” clause defines the terms used throughout the water licence.

#### Discussion

Each definition will be discussed separately hereafter:

- **General**

Some licences contain the following statement prior to the definitions:

Words and expressions which have a defined meaning in the Act have the same meaning where used in this licence, however some of these terms are included below for convenience.

**Recommendation:** The Authority proposes deletion of this statement as it is not included in the electricity licence templates.

- **Act**

All licences define “Act” as “means the *Water Services Licensing Act 1995*”.

**Recommendation:** Retain.

- **assets**

“Assets” have generally been defined as:

In relation to the Licensee means the structures, plant, equipment and excavations owned or operated by the Licensee which cause, allow or assist the collection, transfer, treatment or disposal of [sewage, wastewater, effluent or non-potable water].

**Recommendation:** The Authority proposes that the definition be amended to refer to the definition of “water services works” in the Act.

- **Authority**

The Authority proposes that the definition for “Authority” be aligned with the definition used in the electricity licence templates.

**Recommendation:** **Authority** means the Economic Regulation Authority.

- **complaint**

The licences generally define complaint as:

means any expression of dissatisfaction with a product or service offered or provided.

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<sup>3</sup> Included in all licences.

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This definition differs from both the Standards Australia<sup>4</sup> definition and the definitions used under the *National Water Framework, 2006 Urban Performance Reporting, Indicators and Definitions*, which read respectively:

**Australian Standard:** Expression of dissatisfaction made to an organisation, related to its products, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.

**NWI:** A complaint is a written or verbal expression of dissatisfaction about an action, proposed action or failure to act by the water business/utility, its employees or contractors.

**Recommendation:** The Authority proposes implementation of the Australian Standard definition of complaint whereby “products” is replaced with “products and services”. This is consistent with the direction NWI definitions are taking.

**Note:** AS 4269:1995 was superseded in 2006 by ISO 10002:2006, MOD – the definition of complaint is the same as the AS, however, there is some variation in the complaints handling process described in the Standard.

- **connection**

“*Connection*” is generally defined as:

means a point on a [water, wastewater, sewerage, drainage or irrigation] scheme where a customer can connect to utilise the service.

Under the licence for Rottnest Island Authority, “connection” is defined as “for the purposes of this Licence means a Service Point”. Service Point, in turn, is defined as “means the point where a water service enters a building or metered area”.

**Recommendation:** The Authority proposes that all licences adopt the general definition of “a point on a [water, wastewater, sewerage, drainage or irrigation] scheme where a customer can connect to utilise the service”.

- **Corporation**

Under the licence of the Water Corporation, “Corporation” is defined as “means the Water Corporation of Western Australia established under section 4 of the Water Corporation Act 1995 and includes its directors, employees and agents”.

**Recommendation:** The Authority proposes that this definition be deleted and, instead, be included in the definition of licensee (for the Water Corporation only).

- **customer**

“*Customer*” has been defined as:

means a customer or customers of the Licensee;<sup>5</sup> or

means a person to whom a product or service is offered or provided [by the Licensee].<sup>6</sup>

**Recommendation:** The Authority proposes that the following definition be applied:

a person or organisation to which water services are sold or supplied for consumption by the *Licensee*.

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<sup>4</sup> Refer to clause 3.2 of the Australian Standard on Customer Satisfaction – Guidelines for complaints handling in organizations (ISO 10002:2004, MOD)

<sup>5</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and the Water Corporation.

<sup>6</sup> Included in all licences, except for AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and the Water Corporation.

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- **Customer Service Charter**

“Customer Service Charter” has been defined as “has the meaning in clause ... of this licence”.

**Recommendation:** Retain.

- **day**

“Day” has been defined as “a calendar day”. In electricity and gas licences the term business day is used.

**Recommendation:** delete and replace *day* with “*business day*” that means a day which is not a Saturday, Sunday or a public holiday in Western Australia.

- **deed**

“Deed” has been defined as “National Framework for Reporting on Performance of Urban Water Utilities Deed dated 27 November 2006”.<sup>7</sup>

**Recommendation:** Retain and transfer to relevant Schedule.

- **department**

“Department” has been defined as “the Department of Water”.<sup>8</sup>

**Recommendation:** Add “and its successors” and transfer to relevant Schedule.

- **drainage services** means the development and maintenance of a system of watercourses or artificial drains and works designed to prevent or reduce inundation and remove excess water from an *operating area(s)*.

**Recommendation:** Retain and modify by replacing *operating area(s)* with *area*.

- **Emergency**

Within the Shire of Denmark’s licence “*emergency*” is defined as:

an event related to the provision of the Water Services which causes or threatens to cause harm to people, the environment or property.

**Recommendation:** Retain and transfer to relevant Schedule.

- **infrastructure**

“*Infrastructure*” is defined as:

the structures, plant, equipment and excavations owned or operated by the Licensee which cause or allow the collection, treatment, transportation, delivery or disposal of water, wastewater or sewerage.<sup>9</sup>

Water Service Works up to the Service Point of a building or meter.<sup>10</sup>

“*Infrastructure*” is not defined in any of the electricity licence templates.

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<sup>7</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, City of Kalgoorlie-Boulder and the Water Corporation.

<sup>8</sup> Included in the licence of the Shire of Denmark.

<sup>9</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and the Water Corporation.

<sup>10</sup> Included in the licence of the Rottnest Island Authority.

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**Recommendation:** Delete.

- ***irrigation services***

"*Irrigation service(s)*" is defined as:

the collection and delivery by open channel of water for irrigation and the piped irrigation services;<sup>11</sup>

the collection and delivery by open channel of water for irrigation and the piped irrigation services provided within the Carnarvon Irrigation Services operating area<sup>12</sup>;  
or

the collection, treatment, transfer and delivery of water for the purpose of cultivation of any kind of or tillage or improvement of pasture.<sup>13</sup>

The Act contains a definition of the term "irrigation", but not irrigation services.

**Recommendation:** The Authority proposes to include the following definition.

Irrigation services mean the collection, treatment, transfer and delivery by open channel of water or pipes for the purpose of plant production.

- ***Kambalda Act***

"*Kambalda Act*" has been defined as:

means the *Kambalda Water and Wastewater Facilities (Transfer to Water Corporation) Act 2004*.

**Recommendation:** Retain and transfer to the relevant Schedule.

- ***Kambalda Area***

"*Kambalda Area*" has been defined as:

means the areas specified in Kambalda Sewerage Service Operating Area map OWR-OA-282(A), and the inset to the Goldfields and Agricultural Water Supply Operating Area map OWR-OA-055(G).

**Recommendation:** Retain and transfer to relevant Schedule.

- ***Kambalda's water and wastewater facilities***

"*Kambalda's Water and Wastewater Facilities*" has been defined as "has the meaning in section 5 of the Kambalda Act."

**Recommendation:** The Authority proposes to delete this definition as it is not used within the licence.

- ***Main drain***

"*Main drain*" has been defined as:

means an existing or proposed main drain that is declared, or rural drain in a District declared, under legislation and controlled by the Corporation and includes any Branch Drain that has similarly been declared.

**Recommendation:** Retain and transfer to relevant Schedule.

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<sup>11</sup> Included in the licence of Hamersley Iron Pty Ltd.

<sup>12</sup> Included in the licence of the Water Corporation.

<sup>13</sup> Included in the licences of Gascoyne Water Co-op, Ord Irrigation Co-op, Preston Valley and SWIMCO.

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- **licence**

All licences define "licence" as "means this licence".

**Recommendation:** The Authority proposes to add "and any Schedules attached to it" to this definition.

- **licensee**

"*Licensee*" is defined as:

the [Bunbury Water Board] and includes its directors, employees and agents.<sup>14</sup>

the [Rottnest Island Authority] and includes its officers, employees and agents.<sup>15</sup>

the South West Irrigation Management Co-operative Limited trading as Harvey Water.<sup>16</sup>

the Shire of [Yilgarn].<sup>17</sup>

**Recommendation:** The Authority proposes licensee means <<Name Of Licensee>>.

- **Minister**

"*Minister*" is defined as:

the Minister responsible for administering the Water Services Licensing Act 1995.<sup>18</sup>

the Minister responsible for the Water Services Licensing Act 1995.<sup>19</sup>

**Recommendation:** The Authority proposes deletion of this definition.

- **National Performance Framework**

"*National Performance Framework*" is defined as:

the National Framework for Reporting the Performance of Urban Water Utilities dated June 2006 as amended from time to time.<sup>20</sup>

**Recommendation:** Retain and transfer to relevant Schedule.

- **Non-potable water supply services**

"*Non-potable water supply services*" has been defined as:

means the collection, treatment, transfer and delivery of water supplied from schemes not designed and operated to provide drinking water.

None of the licences has defined the term "drinking water".

**Recommendation:** For reasons of clarity and consistency, the Authority proposes that the term "drinking water" be replaced with "potable water". Potable water is to be defined as:

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<sup>14</sup> Included in the licences of Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley and the City of Kalgoorlie-Boulder.

<sup>15</sup> Included in the licence of Rottnest Island Authority.

<sup>16</sup> Included in the licence of SWIMCO.

<sup>17</sup> Included in all licences except Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley, City of Kalgoorlie-Boulder and Rottnest Island Authority.

<sup>18</sup> Included in the licences of Aqwest (Bunbury Water Board), Busselton Water Board, Water Corporation, Dumbleyung, Goomalling and Hamersley.

<sup>19</sup> Included in all of the licences with the exception of Aqwest (Bunbury Water Board), Busselton Water Board, Water Corporation, Dumbleyung, Goomalling, Hamersley and Denmark.

<sup>20</sup> Included in the licences of Aqwest (Bunbury Water Board) and Busselton Water Board.

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means safe drinking water in accordance with the MoU between the licensee and the Department of Health.

Non-potable water supply services means the collection, treatment, transfer and delivery of water supplied from schemes not designed and operated to provide potable water.

- ***non-exclusive operating area***

"*Non-exclusive operating area*" is defined as:

areas where the Licence does not prohibit another person from providing water services, authorised by written law.<sup>21</sup>

**Recommendation:** The Authority proposes that all licence operating areas become non-exclusive. Hence, differentiation between "non-exclusive" and "sole provider" operating areas will no longer be required. Therefore, it is proposed to delete the definition of "*non-exclusive operating area*".

- ***operating area(s)***

"*Operating area(s)*" is defined as:

the controlled area or areas, or part or parts thereof, in respect of which this Licence has been issued as described in Schedule 1.<sup>22</sup>

the controlled area or areas, or parts thereof, in respect of which this Licence has been issued as described in Schedule 1.<sup>23</sup>

**Recommendation:** In the interest of completeness, the Authority proposes to insert the first definition within all operating licences but change the reference to Schedule 1 to Schedule 2.

- ***potable water***

Refer to recommendation in relation to the definition of "non-potable water supply services".

**Recommendation:** the Authority proposes to insert a definition that states "means safe drinking water in accordance with the MoU between the licensee and the Department of Health".

- ***potable water supply services***

"Potable water supply services" is defined as:

includes the collection, treatment, transfer and delivery of treated water of drinking quality.<sup>24</sup>

includes the collection, treatment, transfer and delivery of water supplied from schemes designed and operated to provide drinking water.<sup>25</sup>

**Recommendation:** For reasons of clarity and consistency, the Authority proposes that the second definition be used as this definition aligns with the definition of "non-potable water supply services". Furthermore, the term "drinking water" is to be

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<sup>21</sup> Included in the licence of the Water Corporation.

<sup>22</sup> Included in the licences for Aqwest (Bunbury Water Board), Busselton Water Board, Water Corporation and Hamersley Iron.

<sup>23</sup> Included in all licences except for Aqwest (Bunbury Water Board), Busselton Water Board, Water Corporation and Hamersley Iron.

<sup>24</sup> Included in licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

<sup>25</sup> Included in licence of Rottnest Island Authority.

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replaced with “potable water”. In addition, the definition will be transferred to the relevant Schedule.

- **Schedule**

“Schedule” is defined as:

means the schedule or schedules which are appended to, and which form part of, this Licence.

**Recommendation:** Retain.

- **Quarter**

“Quarter” is defined as:

means a period of three months ending in March, June, September and December each year.

**Recommendation:** The Authority proposes that reporting no longer occur on a quarterly basis. Hence, it is proposed the definition of “quarter” be deleted.

- **service point**

“Service point” is defined as:

means the point where a Water Service enters a building or metered area.<sup>26</sup>

Refer recommendation in relation to the definition of “connection”.

**Recommendation:** Delete.

- **sewerage services**

“Sewerage services” is defined as:

means wastewater services.<sup>27</sup>

includes the collection, transfer, treatment and disposal of sewage, wastewater and effluent.<sup>28</sup>

**Recommendation:** The Authority proposes that sewerage services are defined as “includes the collection, transfer, treatment and disposal of sewage”.

- **term**

“Term” is defined as:

means the term or duration of this Licence.<sup>29</sup>

In light of recommendation 4, this definition is no longer required.

**Recommendation:** Delete.

- **Warning Signs**

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<sup>26</sup> Included in licence of Rottnest Island Authority.

<sup>27</sup> Included in licences of Hamersley Iron and Water Corporation.

<sup>28</sup> Included in licences of Shire of Brookton, Shire of Coolgardie, Shire of Dalwallinu, Shire of Dowerin, Shire of Dumbleyung, Shire of East Pilbara, Shire of Gnowangerup, Shire of Goomalling, Shire of Jerramungup, City of Kalgoorlie-Boulder, Shire of Kent, Shire of Koorda, shire of Lake Grace, Shire of Moora, Shire of Morawa, Shire of Ravensthorpe, Shire of Victoria Plains, Shire of Wickelpin and Shire of Yilgarn.

<sup>29</sup> Included in licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

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“*Warning signs*” is defined as:

means a sign in the form set out in Schedule 4 of this Licence.<sup>30</sup>

**Recommendation:** Retain and transfer to relevant Schedule.

- **wastewater**

“*Wastewater*” is defined as:

means liquid waste, whether domestic or otherwise, and may include faecal matter and urine.<sup>31</sup>

In light of recommendation in relation to the definition of “sewerage services”, this definition is no longer required.

**Recommendation:** Delete.

- **wastewater services**

“*Wastewater services*” is defined as:

includes the collection, transportation and treatment of wastewater and the disposal of the treated products contained therein, but excludes the supply of effluent.<sup>32</sup>

In light of recommendation in relation to the definition of “sewerage services”, this definition is no longer required.

**Recommendation:** Delete.

- **water services**

“*Water services*” is defined as:

includes water supply, potable water supply, non-potable water supply, sewerage, irrigation and drainage services.<sup>33</sup>

**Recommendation:** As the Act contains a definition of “water services”, the Authority proposes to delete this definition.

- **Water Acts**

“*Water Acts*” is defined as:

means Acts of Parliament and subsidiary legislation relevant to the provision of water services.<sup>34</sup>

**Recommendation:** Retain.

- **water services works**

“*Water service works*” is generally defined as:

includes –

- (a) waterworks, sewerage works, drainage works and irrigation works;
- (b) excavations, structures, buildings, equipment and plant used or intended to be used for the provision of any water services; and

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<sup>30</sup> Included in licence of Shire of Denmark.

<sup>31</sup> Included in licences of Hamersley Iron and Water Corporation.

<sup>32</sup> Included in licences of Hamersley Iron and Water Corporation.

<sup>33</sup> Included in all licences.

<sup>34</sup> Included in licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

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- (c) except where the context otherwise requires, land upon which water services works are constructed or provided.

**Recommendation:** As the Act contains a definition of “water services works”, the Authority proposes this definition is retained and altered to “means *water service works* as defined by the Act”.

### **Recommendation 1**

Amend as indicated above. In addition, the following definitions are also included as a consequence of Recommendation 15 below (Section 5.15).

- **MoU** means the memorandum of understanding referred to in clause 9 as duly amended from time to time.
- **Department of Health** means the Department of Health or its successors in Western Australia.

## **5.2 Licence<sup>35</sup>**

### **Summary**

This clause states that the licence is subject to the provisions of the Act and its subsidiary legislation. It also specifies the geographic area to which the licence applies by reference to a Schedule in the licence.

### **Discussion**

The electricity licence templates do not specifically state that the licence is subject to the Act and its subsidiary legislation.

No material differences exist between water licences and electricity licence templates in relation to the specification of the geographical area to which the water licence applies.

### **Recommendation 2**

- Delete subclause (a) which specifies that the licence is subject to the Act and its subsidiary legislation.
- Transfer licence area details to a Schedule, consistent with the electricity licence templates.

## **5.3 (Sole provider) operating areas<sup>36</sup>**

### **Summary**

This clause specifies that the licensee is the only authorised provider for designated water services within the areas identified as sole provider operating areas.

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<sup>35</sup> Included in all licences.

<sup>36</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

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## Discussion

At present, there are some licences with sole provider operating areas.

Part 4 of the *Economic Regulation Act 2003* states that the Authority must have regard to certain matters including the need to promote:

- regulatory outcomes that are in the public interest; and
- competitive and fair market conduct.

In August 2005, the Authority determined that the Water Corporation's metropolitan operating area become non-exclusive. In its decision (45-2005 published on the Authority's web site), the Authority was mindful of the importance of competition in water services industry markets. Sole provider status restricts opportunities for competition in the provision of water services and is not considered to be in the public interest. This decision was consistent with the directions provided for in Part 111A of the *Trade Practices Act 1974 (Cwlth)*.

The Authority also considered whether other operating licences with 'sole provider' operating areas should be amended to a non-exclusive basis and decided that it was not necessary to implement this change at that stage. However, it decided future applications for an amendment would be considered on the same basis as the Water Corporation's metropolitan operating area application. As a result all subsequent new applications and amendment decisions by the Authority determined operating areas to be non-exclusive.

The Authority proposes that all licence operating areas become non-exclusive. Hence, differentiation between "non-exclusive" and "sole provider" operating areas will no longer be required. It is proposed to delete this clause.

## Recommendation 3

Delete.

## 5.4 Term<sup>37</sup>

### Summary

This clause specifies the term of licence.

### Discussion

The Act sets the licence term for water licences up to 25 years.

### Recommendation 4

Transfer licence term details to a Schedule, consistent with the electricity licence templates.

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<sup>37</sup> Included in all licences.

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## 5.5 General duty to provide services<sup>38</sup>

### *Summary*

This clause requires the licensee to provide water services and undertake, maintain and operate any water services works specified in the licence.

### *Discussion*

The clause mirrors section 32(1) of the Act. Hence, the Authority proposes deletion of the clause.

### *Recommendation 5*

Delete.

## 5.6 Non-potable services<sup>39</sup>

### *Summary*

This clause permits the licensee to provide non-potable water services in any area designated as a controlled area by the Governor under the Act. The licensee does not have exclusive rights to provide non-potable water supply services within those areas.

### *Discussion*

As the clause prescribes the water services that may be provided by the licensee, the Authority proposes that the clause is transferred to the Schedule that addresses “licence details”.

### *Recommendation 6*

Transfer details relating to services to be provided by the licensee to the relevant Schedule.

## 5.7 Drainage<sup>40</sup>

### *Summary*

This clause permits the licensee to provide drainage services in any area designated as a controlled area by the Governor under the Act. The licensee does not have exclusive rights to provide drainage services within those areas.

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<sup>38</sup> Included in all licences, except for AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

<sup>39</sup> Included in the licence of Water Corporation.

<sup>40</sup> Included in the licence of Water Corporation.

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## **Discussion**

As the clause prescribes the water services that may be provided by the licensee, the Authority proposes that the clause is transferred to the Schedule that addresses “licence details”.

### **Recommendation 7**

Transfer details relating to services to be provided by the licensee to the relevant Schedule.

## **5.8 Review<sup>41</sup>**

### **Summary**

This clause requires the Authority and the licensee, following each operational audit, to establish a joint working party to review those matters relevant to the continuation and renewal of the licence.

### **Discussion**

No comparable provision exists under the electricity licence templates.

Also, as there are no impediments to the Authority and a licensee meeting to discuss licence matters at any point in time, the provision is considered redundant.

### **Recommendation 8**

Delete.

## **5.9 Renewal of licence<sup>42</sup>**

### **Summary**

This clause provides that the licence will be renewed upon expiry of its term subject to satisfactory compliance by the licensee with the applicable terms and conditions.

### **Discussion**

The electricity licence templates provide that a licence may only be renewed in accordance with the applicable act.

### **Recommendation 9**

Amend consistent with clauses of the electricity licence templates.

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<sup>41</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

<sup>42</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

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## 5.10 Regulations prescribing standards of service<sup>43</sup>

### *Summary*

This clause requires a licensee to comply with regulations prescribing standards of service made under section 61 of the Act.

### *Discussion*

Although potentially a duplication of legislation, the provision ensures that if a licensee fails to comply with regulations made under section 61 of the Act, the Authority has the power to direct the licensee in writing to correct any breach or prevent a further breach within a specified timeframe.

Clause 5 of the electricity licence templates includes a provision requiring a licensee to comply with all applicable legislation.

For reasons of consistency, it is proposed to delete the clause and include a provision similar to clause 5 of the electricity licence templates.

### *Recommendation 10*

Delete and replace with clause 5 of the electricity licence templates.

## 5.11 Prescribed individual standards of performance (section 33)<sup>44</sup>

### *Summary*

This clause requires a licensee to comply with standards of performance and other requirements prescribed by regulations, which either refers to the licensee specifically or to the class of licence within which the licensee falls.

### *Discussion*

Although potentially a duplication of legislation, the provision ensures that if a licensee does not comply with regulations made under section 33 of the Act, the Authority has the power to direct the licensee in writing to correct any breach or prevent a further breach within a specified timeframe.

Clause 5 of the electricity licence templates includes a provision requiring a licensee to comply with all applicable legislation.

For reasons of consistency, it is proposed to delete the clause and include a provision similar to clause 5 of the electricity licence templates.

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<sup>43</sup> Included in all licences, except for AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

<sup>44</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

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## Recommendation 11

Delete and replace with clause 5 of the electricity licence templates.

### 5.12 Asset management system<sup>45</sup>

#### Summary

This clause requires the licensee to provide for an asset management system in respect of the licensee's assets and notify details of the system and any changes to it to the Authority.

The "asset management system" clauses differ between the licences. Whereas most licences generally follow the wording of section 36 of the Act, others are more detailed in the type of information that must be captured by the asset management system. Also, the timeframe within which a licensee must provide a report to the Authority as to the effectiveness of the system ranges between 12 to 36 months.

#### Discussion

Clause 19 of the electricity distribution licence template, amongst other matters, does not explicitly state the type of information that must be captured by the asset management system. Instead, it requires the licensee to comply with any guidelines issued by the Authority that deal with asset management systems. Such guidelines may, for example, contain minimum requirements relating to the appointment of the expert, the scope of the review, the conduct of the review and the reporting of the results of the review.

Audit guidelines<sup>46</sup> for the performance of asset management audits by electricity, gas and water licensees were published by the Authority in September 2006. The guidelines provide for consistency in the review of asset management systems for electricity, gas and water licensees, thereby:

- reducing compliance costs borne by licensees by enabling the same audit process to be used across the energy sector;
- reducing the Authority's administration costs by providing a uniform compliance assessment framework for utility licences; and
- enabling the Authority to benchmark the effectiveness of the licensee's asset management systems.

As the reporting requirements for asset management systems are already aligned through the Authority's production of a single guideline for electricity, gas and water, the Authority proposes amendment of the "asset management system" clause consistent with clause 19 of the electricity distribution licence template.

It is noted that, although clause 19 requires the report to be provided every 24 months, the Authority may notify the licensee in writing that the report may be provided more or less frequently. For example, licensees who are currently required to report every 36 months may continue to be subject to this timeframe.

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<sup>45</sup> Included in all licences.

<sup>46</sup> <http://www.era.wa.gov.au/water/library/Audit%20Guidelines.pdf>

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## Recommendation 12

Amend consistent with clause 19 of the electricity distribution licence template.

### 5.13 Operational audit<sup>47</sup>

#### Summary

This clause requires a licensee to provide the Authority with an operational audit conducted by an independent expert acceptable to the Authority. The operational audit is to audit the effectiveness of measures taken by the licensee to maintain any quality and performance standards referred to in the licence.

Some differences exist between the “operational audit” clauses included in the existing water services licences. For example, the timeframe within which audits must be undertaken ranges between 12 to 36 months. Also, some licences specify how the independent expert may be nominated or provide additional details in relation to the scope of the audit.

#### Discussion

The statutory scope of operational audits differs slightly between the energy and water licensing frameworks. Whereas for gas and electricity the audit is to focus solely on performance criteria, an operational audit for water licences is to focus on the effectiveness of measures taken by the licensee to maintain both quality and performance standards.

Under the electricity retail and distribution licence templates (clause 22 and 18 respectively), a performance audit must be undertaken every 24 months (unless otherwise notified by the Authority). When undertaking a performance audit, the licensee must comply with the Authority’s standard audit guidelines dealing with performance audits. These guidelines contain, among other things, minimum requirements relating to the appointment of the auditor, the scope of the audit, provide for an extension of time periods between audits, the conduct of the audit and the reporting of the results of the audit.

Notwithstanding the minor anomaly between the scope of operational/performance audits for energy and water licensees, the Authority is of the opinion that operational audits between the utility sectors should be standardised. The Authority therefore published a joint guideline<sup>48</sup> for reporting on operational and performance audits for the electricity, gas and water industries in September 2006.

As the reporting requirements for operational and performance audits are already aligned through the Authority’s production of a single guideline for electricity, gas and water, the Authority proposes amendment of the “operational audit” clause consistent with clauses 22 and 18 of the electricity retail and distribution licence templates respectively.

It is noted that, although clauses 22 and 18 require the report to be provided every 24 months, the Authority may notify the licensee in writing that the report may be provided more or less frequently. For example, licensees who are currently required to report every 36 months may continue to be subject to this timeframe.

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<sup>47</sup> Included in all licences.

<sup>48</sup> <http://www.era.wa.gov.au/water/library/Audit%20Guidelines.pdf>

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## **Recommendation 13**

Amend consistent with clauses in the electricity licence templates.

## **5.14 Technical standards<sup>49</sup>**

### **Summary**

This clause generally follows section 38 of the Act which makes it a condition of every licence that the licensee is to comply with any technical standards published by the Authority in the Government Gazette for the provision of water services and the undertaking, maintenance and operation of water services works.

It is noted that the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and the Water Corporation do not specifically refer to the Authority. Therefore, these licensees are required to comply with any technical standards relating to water services published in the Government Gazette regardless of who published the standards.

### **Discussion**

Neither the electricity retail nor the electricity distribution licence templates contain a provision similar to the “technical standards” clause.

The Authority notes that, to date, it has not published any technical standards in the Government Gazette.

In respect of compliance with technical standards published in the Government Gazette by a person other than the Authority, the Authority notes that it considers it inappropriate for licence regulation to make existing legislation subject of another law. The Authority notes that a licensee’s breach of those technical standards will result in a separate breach of the licensee’s licence, potentially making the licensee liable for breach of law under two different instruments.

The Authority proposes that the clause be deleted from all licences. As the clause mirrors the licence condition contained in section 38 of the Act, inclusion of the clause in the licence does not add any value.

## **Recommendation 14**

Delete.

## **5.15 Potable water quality<sup>50</sup>**

### **Summary**

This clause requires a licensee to comply with prescribed standards for the provision of drinking water. It also requires a licensee to prepare an Annual Drinking Water Quality

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<sup>49</sup> Included in all licences.

<sup>50</sup> Included in the licence of Rottnest Island Authority.

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Plan for its water supply scheme to the satisfaction of the Department of Health (WA) and provide a copy of the plan to the Authority.

### Discussion

The clause is only included in the licence of the Rottnest Island Authority.

The licences of all other potable water suppliers contain standards for the provision of potable water in the Schedules attached to their licence. These standards vary and this is a very unsatisfactory arrangement. The Authority proposes that potable water quality is managed through the development and operation of Memorandums of Understanding (MoU) between the licensee and the Department of Health. These MoUs would reflect the current Australian Drinking Water Guidelines.

### Recommendation 15

Delete the existing clause and replace with the following clause to be included in all water supply licences.

- 9 Memorandum of Understanding
- 9.1 Where the *licensee* is, or intends to, provide *potable water*, the *licensee* must enter into a *MoU* with the *Department of Health* as soon as practicable after the *commencement date*, but not later than 3 months after the *commencement date* without the approval of the *Authority*.
- 9.2 The *MoU* must include provisions:
  - (a) specifying that the *MoU* is a legally binding document between the *licensee* and *Department of Health*;
  - (b) defining and identifying the following sections in the *MoU*:
    - i. Text;
    - ii. Schedules;
    - iii. Binding Protocols;
    - iv. Water Quality Management Processes and Procedures;
  - (c) requiring the *licensee* and *Department of Health* to review and renew the *MoU* not less than once every three years;
  - (d) requiring the *licensee* to provide a complete copy of the *MoU* to the *Authority* within one month of entering into the *MoU*;
  - (e) requiring the *licensee* to provide any amendments to the *MoU* to the *Authority* within one month of entering into any amendments to the *MoU*;
  - (f) specifying quality criteria for drinking water and specifying how these standards will be achieved;

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- (g) requiring that any variations to the quality criteria for drinking water be approved by the Minister for Health;
  - (h) specifying a water quality monitoring plan to ensure that drinking water quality criteria are met;
  - (i) specifying a notification procedure for the reporting by the *licensee* of information or events which may have risks for public health; and
  - (j) requiring an audit by the *Department of Health* on compliance by the *licensee* of its obligations under the *MoU* at least every three years and the provision of the *audit report* to the *Authority*.
- 9.3 For the avoidance of doubt, clause 9.2 does not limit the provisions that the *MoU* may include.
- 9.4 The *licensee* must comply with the terms of the *MoU*.
- 9.5 The *licensee* must *publish* the Text and Schedules of the *MoU* and any amendments to the Text and Schedules of the *MoU* within one month of entering into the *MoU* or of making amendments to the Text or Schedules of the *MoU*.
- 9.6 The *licensee* must *publish* the *Audit Report* on the *licensee's* web site within 1 month of the completion of the audit.
- 9.7 The *licensee* must *publish* its Drinking Water Quality Reports quarterly or at a reporting frequency specified by the *Department of Health*.

## 5.16 Kambalda transitional provisions<sup>51</sup>

### Summary

This clause contains transitional provisions for the Kambalda area. Under the clause, the licensee is exempt from complying with specified licence conditions for a prescribed period of time in relation to the Kambalda area.

### Discussion

As the clause provides for exemptions from prescribed service standards, the Authority proposes that the contents of the clause be transferred to the Schedule(s) specifying the relevant service standards for the specific licensee.

### Recommendation 16

Transfer Kambalda transitional provisions to relevant Schedule(s).

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<sup>51</sup> Included in the licence for Water Corporation.

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## 5.17 Nilgen transitional provisions<sup>52</sup>

### Summary

This clause contains transitional provisions for the Nilgen area. Under the clause, the licensee is exempt from complying with specified licence conditions for a prescribed period of time in relation to the Nilgen area.

### Discussion

As the clause provides for exemptions from prescribed service standards, the Authority proposes that the contents of the clause be transferred to the Schedule(s) specifying the relevant service standards.

In addition, the Authority proposes that, consistent with the Kambalda transitional provisions, the phrase “Nilgen Area” be defined as:

means the inset to the Gingin Operating Area map OWR-OA-247(C).

### Recommendation 17

- Transfer Nilgen transitional provisions to relevant Schedule(s) for the specific licensee.
- Define “Nilgen area” and include within relevant Schedule.

## 5.18 (Individual) standards for the provision of water services<sup>53</sup>

### Summary

This clause states that the licensee is to observe the standards and principles as set out in a schedule of the licence such as Customer Service Standards, Drinking Water System Standards, Drinking Water Health Directions and Services provided by Agreement.

### Discussion

The electricity licence template refers to “individual performance standards” which are contained in applicable legislation and which the Authority may add to by prescribing additional standards and including them as additional terms and conditions in the licence.

Section 33(1)(a) of the Act states that:

Subject to section 34, regulations made under section 61 may —

- (a) prescribe standards of performance that are to be achieved in individual cases in the provision of water services;

To date, no regulations have been made under section 33(1) of the Act.

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<sup>52</sup> Included in the licence for Water Corporation.

<sup>53</sup> Included in the licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

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Hence, the Authority proposes that the “standards for the provision of water services” clause be replaced with a clause akin to clauses 21 (retail) and 17 (distribution) electricity licence templates. In addition, any performance standards currently contained within the “standards for the provision of water services” clause and associated schedules should be transferred to the relevant new schedule.

### **Recommendation 18**

- Replace “standards for the provision of water services” clause with a clause consistent with clauses 21 (retail) and 17 (distribution) electricity licence templates.
- Transfer any performance standards currently contained within the “standards for the provision of water services” clause and associated schedules to the relevant new Schedule.
- Government to consider making regulations under section 33(1) which prescribe performance standards for water supplies.

## **5.19 Performance of functions by the Licensee<sup>54</sup>**

### **Summary**

This clause states that the licensee is to fulfil certain quality and performance standards as outlined in the clause and in the associated schedule.

### **Discussion**

Consistent with its recommendation under paragraph 5.18 above, the Authority proposes that the “performance of functions by the licensee” clause be replaced with a clause consistent with clauses 21 (retail) and 17 (distribution) of the electricity licence templates. In addition, any performance standards currently contained within the “performance of functions by the licensee” clause and associated schedules should be transferred to the relevant new schedule.

### **Recommendation 19**

Refer to recommendation 18.

## **5.20 Information<sup>55</sup>**

### **Summary**

This clause requires the licensee to supply the information specified within Schedule 6 of the licence.

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<sup>54</sup> Included in all licences, except for AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation..

<sup>55</sup> Included in licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

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## Discussion

The electricity licence templates do not contain a clause similar to the “information” clause. However, they do contain a general “provision of information” clause which requires the licensee to provide to the Authority any relevant information that the Authority may require in connection with its functions under the Act.

The Authority proposes that the current “information” clause be amended to address:

- generally the provision of information (consistent with clauses 24 (retail) and 21 (distribution) of the electricity licence templates); and
- the provision of specified information (consistent with the “information” clause currently contained with the water licences).

## Recommendation 20

- Retain “information” clause.
- Include new clause consistent with clauses 24 (retail) and 21 (distribution) of the electricity licence templates.

## 5.21 Performance requirements<sup>56</sup> indicators and reporting

### Summary

This clause states that the licensee is to abide by Schedule 8 or in the case of Hamersley Iron, Schedule 9. Schedules 8 and 9 prescribe performance standards and require the licensee to report on those standards.

### Discussion

The “performance indicators and reporting requirements” Schedule, addresses both “service standards” and “reporting requirements”. As discussed in paragraph 4.2, the Authority proposes that two new schedules be created addressing “Service Standards” and “Information Reporting” respectively.

The newly proposed “information provision” clause (refer to paragraph 5.20 above) will require the licensee to comply with any schedule addressing “Information Reporting”. Similarly, the newly proposed “individual performance standards” clause (refer to paragraphs 5.18 and 5.19) will require the licensee to comply with any schedule addressing “Service Standards.”

Hence, the Authority proposes deletion of the “performance indicators and reporting requirements” clause. Any information requirements contained within Schedules 8 and 9 are to be transferred to the relevant new Schedule. This will include any special audit provisions under NWI data for the Water Corporation, Aqwest, the City of Kalgoorlie-Boulder and the Busselton Water Board.

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<sup>56</sup> Included in licences of AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

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### **Recommendation 21**

Delete and transfer contents of Schedules 8 and 9 to relevant new schedule.

## **5.22 Specified information to be provided<sup>57</sup>**

### **Summary**

This clause requires the licensee to report on the performance indicators set out in Schedule 3, or in the case of Preston Valley Schedule 2 and 3, of the licence.

### **Discussion**

The newly proposed “information provision” clause (refer to paragraph 5.20 above) will require the licensee to comply with any schedule addressing “Information Reporting”. Hence, the Authority proposes deletion of the “performance indicators and reporting requirements” clause. Any information requirements contained within Schedules 2 and 3 will be transferred to the relevant new schedule.

### **Recommendation 22**

Delete and transfer contents of Schedules 2 and 3 to relevant new Schedule.

## **5.23 Accounting records<sup>58</sup>**

### **Summary**

This clause states that the licensee must keep accurate accounting records so to ensure that audits/reviews can be undertaken and so that true and fair accounts of the licensee can be prepared from time to time.

### **Discussion**

Clauses 20 (retail) and 16 (distribution) of the electricity licence templates refer to accounting records and associated standards. For reasons of consistency, it is proposed to amend this clause consistent with the electricity licence templates.

### **Recommendation 23**

Amend this clause consistent with the electricity licence templates.

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<sup>57</sup> Included in all licences, except for AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

<sup>58</sup> Included in all licences, except for AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron, and Water Corporation.

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## 5.24 Prices or Charges<sup>59</sup>

### *Summary*

This clause concerns the licensee informing the Authority of impending changes to its prices or charges for provision of water services.

### *Discussion*

The Authority proposes the clause be deleted. Under the new “provision of information” clause (refer to paragraph 5.20 above), the Authority will be able to request prices and charges data as necessary.

### *Recommendation 24*

Delete.

## 5.25 Breach of licence<sup>60</sup>

### *Summary*

This clause empowers the Authority to serve a notice on a licensee if they contravene the licence and issue them with a monetary penalty of not more than \$100 000 if they fail to remedy the breach within 30 days.

### *Discussion*

This clause generally mirrors section 39 of the Act. Hence, the Authority proposes it be deleted.

### *Recommendation 25*

Delete.

## 5.26 Amendment, revocation or surrender<sup>61</sup>

### *Summary*

This clause outlines the process involved in amending, revoking or surrendering a licence.

### *Discussion*

Clauses 11 and 12 (retail) and 10 and 11 (distribution) of the electricity licence templates address the issue of amendment of the licence.

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<sup>59</sup> Included in all licences except for AqWest (Bunbury Water Board), Busselton Water Board and Water Corporation.

<sup>60</sup> Included in the licence for the Shire of Denmark.

<sup>61</sup> Included in all licences except for Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

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Clauses 9 (retail) and 8 (distribution) of the electricity licence templates address the issue of licence surrender.

For reasons of consistency, the Authority proposes that the water licences follow the electricity licence template format.

### **Recommendation 26**

Amend consistent with clauses 9, 11 and 12 (retail) and 8, 10 and 11 (distribution) of the electricity licence templates.

## **5.27 Amendment<sup>62</sup>**

### **Summary**

This clause specifies that any term, condition or requirement in the licence may be amended by determination of the Authority.

### **Discussion**

Clauses 11 and 12 (retail) and 10 and 11 (distribution) of the electricity licence templates address the issue of amendment of the licence. For reasons of consistency, the Authority proposes that the water licences follow the electricity licence template format.

### **Recommendation 27**

Amend consistent with clauses 11 and 12 (retail) and 10 and 11 (distribution) of the electricity licence templates.

## **5.28 Procedure<sup>63</sup>**

### **Summary**

This clause outlines the process involved in amending a licence.

### **Discussion**

Clauses 11 and 12 (retail) and 10 and 11 (distribution) of the electricity licence templates address the issue of amendment of the licence. For reasons of consistency, the Authority proposes that the water licences follow the electricity licence template format.

### **Recommendation 28**

Amend consistent with clauses 11 and 12 (retail) and 10 and 11 (distribution) of the electricity licence templates.

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<sup>62</sup> Included in the licences of Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

<sup>63</sup> Included in all licences except for Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

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## 5.29 Revocation<sup>64</sup>

### *Summary*

This clause states that the Authority may revoke a licence at the request of the licensee.

### *Discussion*

The electricity licence templates do not address the issue of revocation. For reasons of consistency, the Authority proposes that the clause be deleted from operating licences.

### *Recommendation 29*

Delete.

## 5.30 Appeal<sup>65</sup>

### *Summary*

This clause states that under section 44 of the Act the licensee may appeal to the Minister against the decision of the Authority to amend the licence within 30 days after receiving notice in writing of the decision from the Authority.

### *Discussion*

The electricity licence templates do not address appeals. The issue of appeals is addressed in the Act and, therefore, does not need to be restated in the licence terms.

### *Recommendation 30*

Delete.

## 5.31 New licence<sup>66</sup>

### *Summary*

This clause states that procedures relating to amendment of the licence also apply to the substitution of a new licence for the existing licence.

### *Discussion*

This matter is addressed in the electricity licence templates under clause 12.3 (retail) and 11.3 (distribution).

As it is proposed under paragraph 5.27 to include clauses 12 (retail) and 11 (distribution) of the electricity licence templates within the water licences, the “new licence” clause could be deleted.

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<sup>64</sup> Included in licence of Hamersley Iron.

<sup>65</sup> Included in licences of Aqwest (Bunbury Water Board) and Busselton Water Board.

<sup>66</sup> Included in licences of Aqwest (Bunbury Water Board), Busselton Water Board and Water Corporation.

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## Recommendation 31

Delete

## 5.32 Industry Codes<sup>67</sup>

### Summary

This clause requires the licensee to observe specified industry codes, such as the *Sewerage Code of Australia WSA 02 1999* and the *Water Reticulation Code of Australia WSA 03 1999*.

### Discussion

Consistent with electricity and gas licences the Authority is proposing the addition of a compliance clause. This will require licensees to comply with all applicable legislation. Codes are included in applicable legislation. As discussed in paragraph 4.2, the Authority proposes that all service standards be included within one schedule. Requirements in relation to industry codes should be included within this schedule.

Also, as discussed in paragraph 5.18, the Authority proposes that a new clause be included which requires the licensee to comply with any service standards set out in this schedule.

## Recommendation 32

Replace this clause with the following compliance clause.

- 5 Compliance
- 5.1 Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.
- 5.2 Subject to the provisions of any *applicable legislation*, the *Authority* may direct the *licensee* in writing to do any measure necessary to:
  - (a) correct the breach of any *applicable legislation*; or
  - (b) prevent the breach of any *applicable legislation* occurring again,and specify a time limit by which such action must be taken.

## 5.33 Terms and Conditions of Customer Contracts<sup>68</sup>

### Summary

This clause provides that licensees may enter into agreements with customers to provide water services. However, licensees may not enter into agreements with customers that

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<sup>67</sup> Included in all licences except for Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

<sup>68</sup> Included in all licences except for Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

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exclude, modify or restrict the terms and conditions of the licence without the prior written approval of the Authority.

## **Discussion**

Neither the Act nor regulations provide any distinction between small use and large use customers in water supply or specify the standards of conduct relating to customers.

In Western Australia, the Authority is responsible for the administration and enforcement of the *Code of Conduct (for the Supply of Electricity to Small Use Customers) 2004*.

The Code, which took effect on 31 December 2004, deals with:

- marketing;
- connection;
- billing;
- payment;
- payment difficulties and financial hardship;
- disconnection & reconnection;
- pre-payment meters;
- information and communication;
- customer service charter;
- complaints & dispute resolution;
- record keeping; and
- customer service standard payments.

A similar Code of Conduct would benefit water services customers by setting a standard expectation for service activity and quality. The Authority understands that the Department of Water has recommended that the legislation include a provision allowing the Minister and / or the Authority to develop codes.

In the energy sector, protection from unfair or discriminatory market practices for small use customers in a limited contestable market is provided for through the use of Standard Form Contracts. The Authority must review and approve these Standard Form Contracts. Large energy customers have access to a fully contestable market and don't require this level of regulatory protection. There is no proposal to introduce Standard Form Contracts for water customers as full retail contestability is currently not being considered for the water market.

In the water sector, the role and approval of Customer Service Charter replaces to some extent the provision for approval of customer contracts.

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### Recommendation 33

Modify the clause as follows and transfer to Schedule 3 until a Code of Conduct or equivalent is developed.

- 5 Customer Contracts
- 5.1 Subject to compliance with this clause, the *licensee* may enter into an agreement with a *customer* to provide water services that exclude, modify or restrict the *terms and conditions* of this *licence*.
- 5.2 Subject to clause 5.3, an agreement referred to in clause 5.1:
- (a) must be approved by the *Authority* prior to its commencement; and
  - (b) must not be amended without the prior approval of the *Authority*.
- 5.3 The *licensee* does not need the approval of the *Authority* if the terms that exclude, modify or restrict the *terms and conditions* of this *licence*:
- (a) were in force before the commencement of this *licence*; or
  - (b) have previously been approved by the *Authority* in another agreement that applies to the same class of *customer*.
- 5.4 If a *licensee* enters into an agreement with a *customer* that excludes, modifies or restricts the *terms and conditions* of this *licence*, the *licensee* must *publish* a report annually that includes the following information:
- (a) the total number of agreements entered into by the *licensee*, categorised by location and the type of exclusion, modification or restriction;
  - (b) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and the type of exclusion, modification or restriction;
  - (c) the total number of agreements entered into by the *licensee*, categorised by location and by land use; and
  - (d) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and by land use.

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## 5.34 Obligations to Public Authorities and other Licensees<sup>69</sup>

### *Summary*

This clause specifies that wastewater treatment plants operated by the licensee shall have relevant licences from the Department of Environment and Conservation and be operated in compliance with those licences.

### *Discussion*

Section 29 of the Act states that:

The grant of a licence does not affect the licensee's obligations to comply with any other written law in relation to matters covered by a licence.

In view of this, the clause appears redundant and should be deleted. Also, there is no equivalent clause in the electricity licence templates.

### *Recommendation 34*

Delete.

## 5.35 Customer Consultation<sup>70</sup>

### *Summary*

This clause generally requires the licensee to establish customer consultation processes to consult its customers on prescribed matters. The exact content of the clause (and associated Schedule, where applicable) differ between licences.

### *Discussion*

As discussed in section 4.2 above, it is proposed that all matters relating to customer conduct be included in Schedule 3. Hence, the Authority proposes that all requirements relating to customer consultation be transferred to the relevant Schedule.

As no amendments are proposed to the contents of the clause, the contents of the Schedule may differ between licensees.

### *Recommendation 35*

Transfer all details relating to customer consultation to Schedule 3.

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<sup>69</sup> Included in licences of Shire of Brookton, Shire of Coolgardie, Shire of Dalwallinu, Shire of Denmark, Shire of Dowerin, Shire of Dumbleyung, Shire of East Pilbara, Shire of Gnowangerup, Shire of Goomalling, Shire of Jerramungup, City of Kalgoorlie-Boulder, Shire of Kent, Shire of Koorda, Shire of Lake Grace, Shire of Moora, Shire of Morawa, Shire of Northampton, Shire of Ravensthorpe, Rottnest Island Authority, Shire of Victoria Plains, Shire of Wickepin and Shire of Yilgarn.

<sup>70</sup> Included in all licences except for Water Corporation.

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## 5.36 Customer Service Charter<sup>71</sup>

### *Summary*

This clause and the associated Schedule(s) generally require the licensee to prepare a customer service charter and prescribe the matters to be addressed within the charter. The exact content of the clause (and Schedule(s)) differ between licences. The Authority is required to review and approve all charters and approve any subsequent amendments to charters.

### *Discussion*

There is no equivalent clause in the electricity licence templates.

The details as specified in the current clauses are better placed in a Schedule relating to customer conduct.

As no amendments are proposed to the contents of the clause, the contents of the Schedule may differ between licensees.

### *Recommendation 36*

Transfer all details relating to customer service charters to Schedule 3.

## 5.37 Dispute Resolution<sup>72</sup>

### *Summary*

This clause states that the licensee must comply with the customer complaints and investigation, conciliation and arbitration process as set out in Schedule 2 of the licence.

### *Discussion*

There is no equivalent clause in the electricity licence templates. In the absence of a customer code of conduct or equivalent, the Authority proposes that the clause be retained.

### *Recommendation 37*

Retain and place in Schedule 3 after the Customer Complaints clause.

## 5.38 Customer Complaints<sup>73</sup>

### *Summary*

This clause specifies the licence terms and conditions for a dispute resolution process.

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<sup>71</sup> Included in all licences.

<sup>72</sup> Included in licences of Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

<sup>73</sup> Included in all licences except for Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

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## **Discussion**

There is no equivalent clause in the electricity licence templates as these requirements are contained within the Code of Conduct.

The details as specified in the current clause are better placed in a Schedule addressing customer conduct. Hence, consistent with the “dispute resolution” clause (paragraph 5.37 above), the Authority proposes that all details relating to customer complaints be transferred to a relevant schedule and a clause be inserted in the licence requiring the licensee to comply with the Schedule.

## **Recommendation 38**

Transfer all existing details relating to customer complaints to Schedule 3.

## **5.39 Customer surveys<sup>74</sup>**

### **Summary**

This clause provides that the Authority may require the licensee to commission an independent customer survey on an issue which the Authority considers to be of concern to the licensee’s customers. The Authority may prescribe the conditions and parameters of the survey, but shall not require a survey to be conducted more frequently than once every 12 months.

### **Discussion**

There is no equivalent clause in the electricity licence templates.

The details as specified in the current clause are better placed in a Schedule addressing customer conduct. Hence, the Authority proposes that all details relating to customer surveys be transferred to a relevant Schedule and a clause be inserted in the licence requiring the licensee to comply with the Schedule.

Once a Code of Conduct or equivalent is developed, provisions addressing customer surveys may become redundant.

### **Recommendation 39**

Retain. However, this clause may be deleted at a later date once a code of conduct or its equivalent is developed.

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<sup>74</sup> Included in licences of Shire of Brookton, Shire of Coolgardie, Shire of Dalwallinu, Shire of Denmark, Shire of Dowerin, Shire of Dumbleyung, Shire of East Pilbara, Shire of Gnowangerup, Shire of Goomalling, Shire of Jerramungup, City of Kalgoorlie-Boulder, Shire of Kent, Shire of Koorda, Shire of Lake Grace, Shire of Moora, Shire of Morawa, Shire of Northampton, Shire of Ravensthorpe, Shire of Victoria Plains, Shire of Wickepin and Shire of Yilgarn.

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## 5.40 Methods or principles to be applied in the provision of water services<sup>75</sup>

### Summary

This clause states that the licensee will be held accountable for its provision of water services notwithstanding its engagement of other persons to provide water services on its behalf. It also states that the licensee must ensure that its water services are available for connection to any land within the operating area, subject to certain conditions. This clause does not refer to any obligation to supply or offer to supply.

### Discussion

There is no equivalent clause in the electricity licence templates. There are two aspects to this clause. The first part relates to a licensee's obligations when using a third party to provide licensed services. A licensee is still accountable for a contractor's actions and any omissions. This aspect of the clause is not required as the condition is covered by existing commonwealth corporation's law and common law.

The second part of the clause relates to a 'provision of service' obligation. Section 32(1) of the Act provides for a general duty by licensees to provide water services and undertake, maintain and operate water services works and this aspect of clause is also not required. Also, there is no equivalent clause in the electricity licence templates.

### Recommendation 40

Delete.

## 5.41 Contracting of Services<sup>76</sup>

### Summary

This clauses state that the licensee may engage persons to provide water services which are the subject of the licence. When a licensee engages third parties to undertake services, the licensee remains responsible to ensure those services comply with the terms and conditions of the licence and with the relevant legislation.

### Discussion

As discussed in 5.40, the provision is not required as the condition is covered by existing commonwealth corporation's law and common law. Also, there is no equivalent clause in the electricity licence templates.

### Recommendation 41

Delete.

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<sup>75</sup> Included in all licences except for AqWest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

<sup>76</sup> Included in licences of Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

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## 5.42 Provision of Water Services<sup>77</sup>

### *Summary*

This clause requires the licensee to apply the methods and principles set out in Schedule 5 of the licence. Schedule 5 addresses “availability and connection of services”.

### *Discussion*

As discussed in 5.40, the provision is not required as the condition is covered by Section 32(1) of the Act. Also, there is no equivalent clause in the electricity licence templates.

### *Recommendation 42*

Delete.

## 5.43 Consumer Committees<sup>78</sup>

### *Summary*

This clause requires the licensee to establish committees of consumers for the purpose of obtaining consumer opinions on the licensee’s prices and service standards as set out in Schedule 4 of the licence.

### *Discussion*

There is no equivalent clause in the electricity licence templates.

The details as specified in the current clause are better placed in a schedule addressing customer conduct. Hence, the Authority proposes that all details relating to customer committees be transferred to a relevant schedule and a clause be inserted in the licence requiring the licensee to comply with the Schedule.

### *Recommendation 43*

Transfer all details relating to customer committees to Schedule 3. This clause may need to be reviewed in the future if a code of conduct is introduced.

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<sup>77</sup> Included in licences of Aqwest (Bunbury Water Board), Busselton Water Board, Hamersley Iron and Water Corporation.

<sup>78</sup> Included in licence of Water Corporation.

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# ELECTRICITY LICENCE TEMPLATE PROVISIONS THAT HAVE NO WATER LICENCE EQUIVALENT

## 5.44 Definitions

### Summary

The electricity licence templates contain a number of definitions not included in the water licences.

### Discussion

It is proposed that the following definitions be added to the water licences:

- **applicable legislation** includes:
  - (a) the Act; and
  - (b) the Regulations; and
  - (c) relevant Codes.
- **asset management system** means the measures that are to be taken by the licensee for the proper maintenance, expansion or reduction of the water services system.
- **business day** means a day which is not a Saturday, Sunday or a Public Holiday in Western Australia.
- **commencement date** means the date specified in Schedule 1.
- **Electricity (water) licensing email address** means:
  - (a) in relation to the Authority, the addressee's authorised Authority email address or other such email address as notified in writing to the licensee; and
  - (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 Authority.
- **expiry date** means the date specified in Schedule 1.
- **individual performance standards** mean any *individual performance standards* approved by the *Authority* pursuant to clause 16 and specified in Schedule 4 of the *licence*.
- **notice** means a written notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to, or in connection with, this licence.
- **operational audit** means an audit of the effectiveness of measures taken by the licensee to meet the performance criteria in this licence.
- **performance criteria** means:
  - (a) the terms and conditions of the licence; and

- 
- (b) any other relevant matter in connection with the applicable legislation that the Authority determines should form part of the performance audit.
- (a) **publish** in relation to a report or information means either:
- (a) posting the report or information on the *licensee's* web site; or
  - (b) sending the report or information to the *Authority* to be published on the *Authority's* web site.
- (b) **Regulations** means:
- (a) *Water Services Coordination Regulations 1996*; and
  - (b) *Water Services Licensing (Extension of Enactments) Regulations 1997*; and
  - (c) any regulations in force from time to time made pursuant to the Act.
- (c) **related body corporate** has the meaning in section 50 of the Corporations Act 2001 (Cwlth).
- (d) **review guidelines** means the guidelines for the review of customer service charters published on the Authority's web site.
- (e) **reviewable decision** means a decision by the *Authority* pursuant to:
- (a) clause 16.3;
  - (b) clause 17.5; and
  - (c) clause 22.3
- of this *licence*.

#### **Recommendation 44**

Amend where appropriate consistent with electricity licence templates.

## **5.45 Fees**

### **Summary**

Clause 4 of the electricity licence templates requires a licensee to pay the applicable fees in accordance with the *Electricity Industry (Licensing Fees) Regulations 2005*.

### **Discussion**

The Act requires licensees to pay for the application and renewal of a water services licence. The *Water Services Coordination Regulations 1996* prescribe the fee for application and renewal of water services licences at \$200. While the inclusion of a fee clause replicates a regulation provision, its inclusion is recommended to maintain consistency with the electricity licence templates.

#### **Recommendation 45**

Amend consistent with clause 4 of the electricity licence templates.

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## 5.46 Transfer of licence

### *Summary*

Clause 7 (retail) and 6 (distribution) of the electricity licence templates specify that a licence may only be transferred in accordance with the Act.

### *Discussion*

This is a routine procedural matter that should be included within a licence for completeness.

### *Recommendation 46*

Insert.

## 5.47 Cancellation of licence

### *Summary*

Clause 8 (retail) and 7 (distribution) of the electricity licence templates specify that a licence may only be cancelled in accordance with the Act.

### *Discussion*

This is a routine procedural matter that should be included within a licence for completeness.

### *Recommendation 47*

Insert.

## 5.48 Supplier of Last Resort

### *Summary*

Clause 17 of the electricity retail licence template requires a licensee who is designated as a supplier of last resort under the Act to perform the functions of the supplier of last resort.

### *Discussion*

The Authority notes that the Act does not provide for the establishment of a supplier of last resort scheme. Hence, at this stage, the Authority does not propose to include a similar clause within the water services licences.

### *Recommendation 48*

Omit.

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## 5.49 Directions by the Authority

### *Summary*

Clause 18 of the electricity retail licence template requires a licensee to comply with directions made under section 53 of EIA 2004. (Section 53 provides that the Authority may direct an amendment to an approved standard form contract.)

### *Discussion*

No comparable provision exists under any of the water licences. Also, the Act does not provide for directions made by the Authority.

Hence, the Authority proposes that the clause be omitted from the water licences.

### *Recommendation 49*

Omit.

## 5.50 Approved scheme

### *Summary*

Clause 19 (retail) and 14 (distribution) of the electricity licence templates specify that a licensee must not supply electricity to a small use customer unless the licensee is:

- a member of an approved Electricity Ombudsman Scheme; and
- bound by, and compliant with, any decision or direction of the Electricity Ombudsman under the approved scheme.

### *Discussion*

The Act does not provide for the establishment of a Water Ombudsman Scheme. Hence, at this stage, the Authority does not propose to include a similar clause within the operating licences.

### *Recommendation 50*

Omit.

## 5.51 Publishing information

### *Summary*

Clauses 25 (retail) and 22 (distribution) of the electricity licence templates provide that the Authority may direct a licensee to publish any information it considers relevant in connection with the licence or performance by the licensee of its obligations under the licence within a specified timeframe. In the event that a licensee considers information to be confidential, the licensee must notify the Authority or seek a review of the Authority's decision.

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### ***Discussion***

No comparable provision exists under the water licences. The Authority proposes that a similar clause be included in the water licences.

### ***Recommendation 51***

Insert.

## **5.52 Notices**

### ***Summary***

Clauses 26 (retail) and 23 (distribution) of the electricity licence templates require all notices to be in writing. They also specify when a notice is being regarded as having been sent and received.

### ***Discussion***

No comparable provision exists under the water licences. The Authority proposes that a similar clause be included in the water licences.

### ***Recommendation 52***

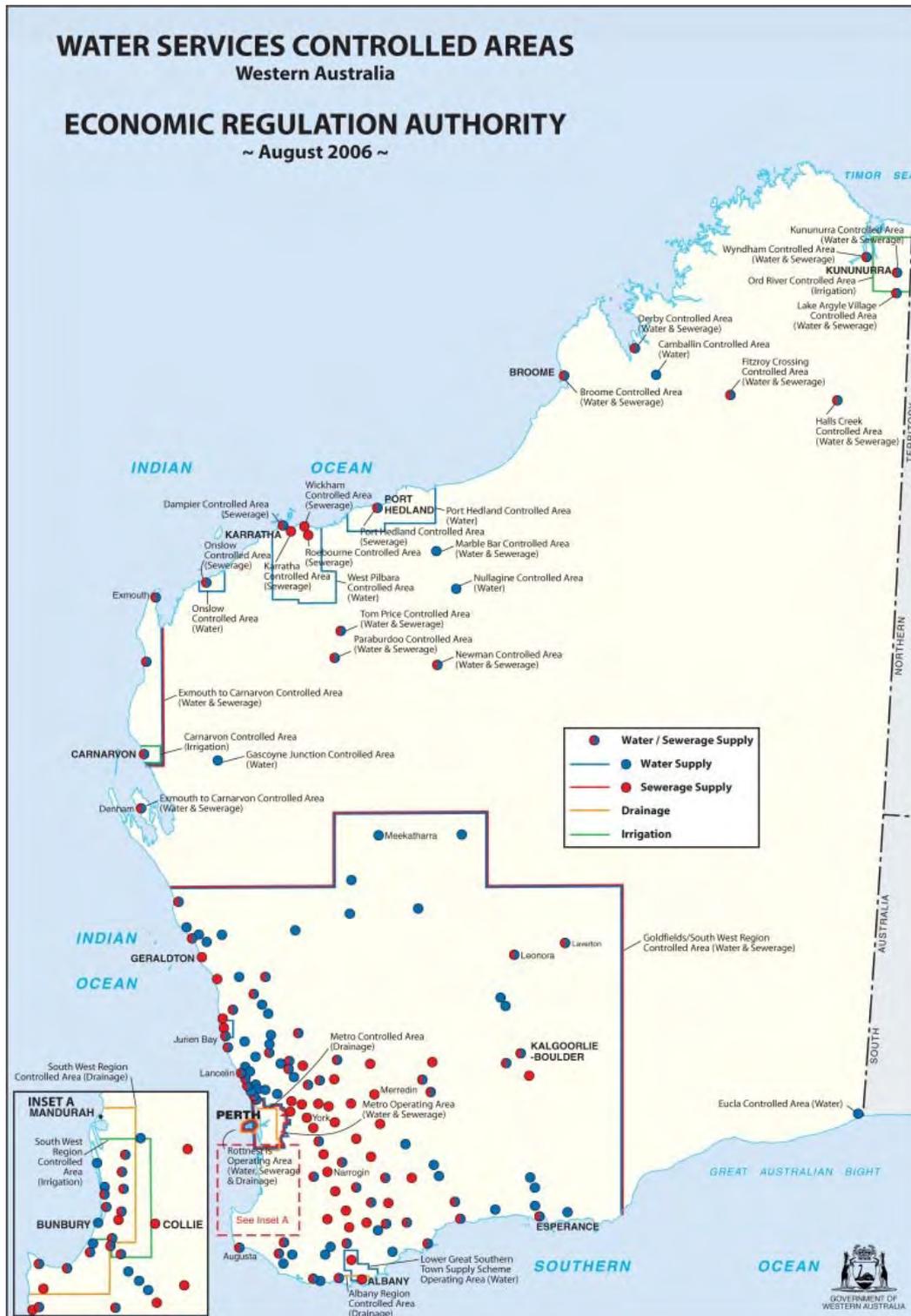
Insert.

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## 6 Sole provider operating areas

A controlled area is geographic area established by the Governor by way of an Order published in the Government Gazette under Part 3 of the Act. The Authority has no role in the creation of controlled areas. This is a matter for Government.

Figure 2: Western Australian Water Services Controlled Areas



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A water operating licence may apply to one or more controlled areas. The controlled area(s) to which a water operating licence applies are referred to as “operating areas”.

When granting a licence, the Authority determines the operating area to which the licence will apply. An operating area may be deemed to be exclusive (sole provider) or non-exclusive.

A sole provider provision was not originally intended for the Act. At the time the Act was passed, sole provider capacity was added. The Office of Water Regulation supported this proposal provided that both options were open to all licensees and potential licensees.

In August 2005, following a request by the Water Corporation to expand its metropolitan operating area, the Authority undertook extensive consultation as to whether sole provider status should continue.

Part 4 of the *Economic Regulation Authority Act 2003* states that the Authority must have regard to certain matters which include the need to promote:

- regulatory outcomes that are in the public interest; and
- competitive and fair market conduct.

The Authority determined that the Water Corporation’s metropolitan operating area become non-exclusive. In that decision<sup>79</sup>, the Authority was mindful of the importance of competition in water services industry markets. Sole provider status restricts opportunities for competition in the provision of water services and is not considered to be in the public interest. 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, and mechanisms, such as Part 111A of the *Trade Practices Act 1974* (Cth), exist for parties to have access to those operating areas.

The Authority also determined that operating areas would become non-exclusive in any subsequent amendment decisions for licensees.

At present, with the exception of some of the Water Corporation’s operating areas, all operating areas in respect of sewerage services, drainage services and irrigation services are exclusive operating areas.

### **Recommendation 53**

Amend all operating areas so these become non-exclusive.

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<sup>79</sup> A copy of the Reasons and Decision are available on the Authority’s web site.

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## 7 Licence exemptions

The Governor may, under section 19 of the Act, exempt any person or class of persons from the requirement to obtain a water operating licence.

The Authority has no role in the grant of a licence exemption. This is a matter for Government.

Licence exemptions are the subject of a Memorandum of Understanding between the Authority and the Department of Water (DoW). It is the responsibility of DoW to process licence exemption applications.

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## 8 Licence fees

The *Water Services Coordination Regulations 1996* prescribe the fees applicable to operating licences. The fees are summarised in Table 2.

**Table 2: Water operating licence fees**

Application fees	
<b>Application for the grant or renewal of a licence</b>	<b>\$200</b>

The *Electricity Industry (Licensing Fees) Regulations 2005* prescribe the fees applicable to electricity retail and distribution licences and are summarised in Table 3.

**Table 3: Electricity retail and distribution licence fees**

Application fees	
<b>Application for the grant, transfer, amendment or renewal of a licence</b>	<b>\$500</b>
Annual distribution licence fee	
If the Distribution system length is:	
<b>Less than 1 km</b>	<b>\$500</b>
<b>Not less than 1 km but less than 10 km</b>	<b>\$5 000</b>
<b>Not less than 10 km but less than 100 km</b>	<b>\$10 000</b>
<b>Not less than 100 km but less than 1 000km</b>	<b>\$20 000</b>
<b>Not less than 1 000 km</b>	<b>\$25 000</b>
Annual retail licence fee	
If the number of customers is:	
<b>Less than 100</b>	<b>\$1 000</b>
<b>Not less than 100 but less than 1 000</b>	<b>\$7 500</b>
<b>Not less than 1 000 but less than 5 000</b>	<b>\$12 500</b>
<b>Not less than 5 000 but less than 25 000</b>	<b>\$20 000</b>
<b>Not less than 25 000</b>	<b>\$35 000</b>

No annual fees apply for the provision of water services. In addition, no fees have been prescribed for the amendment and transfer of a water operating licence. The Authority considers it appropriate, as it is responsible for the licence fee structures specified within the respective licence fee regulations, for Government to review the current water fee structure.

This would require amendment of the Act, as the Act currently does not provide for annual licence fees or fees for the amendment of a licence.

### **Recommendation 55**

Government to consider the need to revise the water licence fee structure.

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## 9 Key differences between water and electricity licensing (legislative) frameworks

As discussed earlier, water licenses are far more prescriptive than electricity licences. This is mainly due to differences in the statutory frameworks for water and electricity. For example, where the electricity statutory framework provides for the making of codes and enforcement of those codes by way of licence condition, the water regulatory framework tends to rely upon the licences themselves for the imposition of conditions on licensees.

The following highlights a number of key areas of difference between the water and electricity statutory frameworks.

The Department of Water is currently facilitating a review of water services legislation and these matters are also under consideration through that review, the results of which may have a subsequent impact on water licences. The Authority understands that the Department of Water has recommended that the new legislation include provisions allowing the Minister and/or the Authority to develop a heads of power authorising regulations that prescribe licence terms and conditions, codes, and a water industry ombudsman scheme.

### 9.1 Licence conditions

Both electricity and water licences may be subject to statutory licence terms and conditions and terms and conditions imposed by the Authority. The EIA 2004 specifically provides for electricity licences to be subject to terms and conditions imposed by way of regulation.

Section 12 of the EIA 2004 authorises regulations to be made prescribing licence terms and conditions. No explicit head of power is contained within the Act.

This regulation-making power allows Government to achieve policy objectives through the imposition of licence terms and conditions. It also ensures Government can impose its policy objectives independent from the Authority.

As the Act does not contain specific powers, it is unclear whether terms and conditions may be imposed by regulations upon water licences.

### 9.2 Codes

The electricity regulatory framework provides the Authority with the heads of power to prepare and issue codes in respect of a number of prescribed matters. If the Authority fails to prepare and issue a code in respect of any of the prescribed matters, the Minister for Energy may do so. These matters are dealt with under Part 2 Division 7 of the EIA 2004.

A list of electricity codes enacted to date, relevant to the licence framework, is included in section 2.2.1.

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Compliance with the codes is enforceable through the monitoring of licence conditions. The ability to make codes which deal in depth with prescribed matters has, to a large extent, removed the need for prescriptive electricity licences.

The water regulatory framework does not provide for the making of codes which may be enforced by way of licence condition. As a result, the water licence itself is far more prescriptive than that for electricity.

### 9.3 Customer protection

One of the electricity codes enforceable as a licence condition is the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004*. This code regulates and controls the conduct of electricity licensees and marketing agents in the marketing and supply of electricity and was established under Part 6 of the EIA 2004.

With respect to water, the Act does not provide the heads of power to make a code with respect to standards relating to the supply of water.

### 9.4 Industry ombudsman

Part 7 of the EIA 2004 and Part 2D of the ECA 1994 provide for the establishment of an electricity and gas industry ombudsman. This function is currently being fulfilled by the Energy Ombudsman. The Energy Ombudsman investigates and deals with disputes and complaints between customers, licensees and marketing agents.

With respect to water, the Act does not provide for the establishment of a water industry ombudsman scheme.

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## APPENDICES

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## Appendix 1: Glossary

Term	Definition
Act	<i>Water Services Licensing Act 1994</i>
AER	Australian Energy Regulator
Authority	Economic Regulation Authority
EIA 2004	<i>Electricity Industry Act 2004</i>
ESC	Essential Services Commission, Victoria
ESCOSA	Essential Services Commission, South Australia
IPART	Independent Pricing and Regulatory Tribunal, New South Wales

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## Appendix 2: Water Services Operating Licence (Template)

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# Water Services Operating Licence

## Water Services Licensing Act 1995 (WA)

### Operating Licence

The Economic Regulation Authority (Authority), established under the *Economic Regulation Authority Act 2003* hereby grants an operating licence (licence) to <<Name>> subject to, and in accordance with, the terms set out in this licence.

Dated this <<Date>> day <<Month>> 20xx.

Signed by a delegate; \_\_\_\_\_  
member; or  
the Chairman of the Economic Regulation Authority

# Operating Licence

*Water Services Licensing Act 1995 (WA)*

**LICENCE No <<Number>>**

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**<<Name>>**  
**(licensee)**

**<<ABN\_ACN >>**

**<<ADDRESS>>**

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# Operating Licence

## 1 Definitions

**Act** means the *Water Services Licensing Act 1995*.

**assets** means water services works as defined in the Act.

**asset management system** means the measures that are to be taken by the *licensee* for the proper maintenance, expansion or reduction of the water service system.

**asset management system review** means a review of the effectiveness of the *asset management system*.

**applicable legislation** includes:

- (a) the *Act*;
- (b) the *Regulations*; and
- (c) the *Codes*.

**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 *MoU*.

**Authority** means the Economic Regulation Authority.

**business day** means a day which is not a Saturday, Sunday or a public holiday in Western Australia.

**Code** means any *code* in force from time to time made pursuant to the *Act*.

**complaint** means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.

**commencement date** means the date specified in Schedule 1.

**customer** means a person or organisation to which water services are sold or supplied for consumption by the *Licensee*.

**customer service charter** means the charter prepared by a licensee pursuant to clause 2 in schedule 3 of this licence.

**Department of Health** means the Department of Health or its successors in Western Australia.

**drainage services** means the development and maintenance of a system of watercourses or artificial drains and works designed to prevent or reduce inundation and remove excess water from an area.

**expiry date** means the date specified in Schedule 1.

**individual performance standards** mean any *individual performance standards* approved by the *Authority* pursuant to clause 16 and specified in Schedule 4 of the *licence*.

**irrigation services** means the collection, treatment, transfer and delivery by pipes or open channel of water for the purpose of plant production.

**licence** means this licence and any Schedules attached to it.

**licensee** means <<Name of Licensee>>.

**MoU** means the memorandum of understanding referred to in clause 9 as duly amended from time to time.

**Non-potable water supply services** means the collection, treatment, transfer and delivery of water supplied from water services systems not designed and operated to provide *potable water*.

**notice** means a written notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to, or in connection with, this *licence*.

**Operating Area(s)** means the controlled area or areas, or part or parts thereof, in respect of which this *licence* has been issued as described in Schedule 2.

**operational audit** means an audit of the effectiveness of measures taken by the *licensee* to meet the *performance criteria* in this *licence*.

**performance criteria** means:

- (a) the *terms and conditions* of the *licence*; and
- (b) any other relevant matter in connection with the *applicable legislation* that the *Authority* determines should form part of the *performance audit*.

**potable water** means safe drinking water in accordance with the MoU between the licensee and the Department of Health.

**potable water supply services** means the collection, treatment, transfer and delivery of water supplied from water services systems designed and operated to provide *potable water*.

**publish** in relation to a report or information means either:

- (a) posting the report or information on the *licensee's* web site; or
- (b) sending the report or information to the *Authority* to be published on the *Authority's* web site.

**Regulations** means:

- (a) *Water Services Coordination Regulations 1996*;
- (b) *Water Services Licensing (Extension of Enactments) Regulations 1997*; and
- (c) any regulations in force from time to time made pursuant to the *Act*.

**related body corporate** has the meaning in section 50 of the *Corporations Act 2001 (Cwlth)*.

**review guidelines** means the guidelines for the review of *customer service charters* published on the *Authority's* website.

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**reviewable decision** means a decision by the *Authority* pursuant to:

- (a) clause 16.3;
- (b) clause 17.5; and
- (c) clause 22.3

of this *licence*.

**Schedule** means the schedule or schedules which are appended to, and which form part of, this *licence*.

**sewerage services** mean the collection, transfer, treatment or disposal of sewage.

**terms and conditions** means the terms and conditions in this *licence* including and terms and conditions contained in the *Schedules*.

**Water Acts** means Acts of Parliament and subsidiary legislation relevant to the provision of water services.

**water licensing email address** means:

- (a) in relation to the *Authority*, the addressee's authorised *Authority* email address or other such email address as notified in writing to the *licensee*; and
- (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 *Authority*.

**water service works** means *water service works* as defined in the *Act*.

## **2 Grant of Licence**

2.1 The *licensee* is granted a *licence* for the *Operating Area(s)* to provide the water services described in Schedule 1 in accordance with the *terms and conditions* of this *licence*.

## **3 Term**

3.1 This *licence* commences on the *commencement date* and continues until the earlier of:

- (a) the cancellation of the *licence* pursuant to clause 11 of this *licence*;
- (b) the surrender of the *licence* pursuant to clause 12 of this *licence*; or
- (c) the *expiry date*.

## **4 Fees**

4.1 The *licensee* must pay the applicable fees in accordance with the *Regulations*.

## **5 Compliance**

5.1 Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.

5.2 Subject to the provisions of any *applicable legislation*, the *Authority* may direct the *licensee* in writing to do any measure necessary to:

- (a) correct the breach of any *applicable legislation*; or
- (b) prevent the breach of any *applicable legislation* occurring again, and specify a time limit by which such action must be taken.

## 6 Customer Complaints

- 6.1 The *licensee* must establish *customer* complaints processes as set out in Schedule 3.

## 7 Customer Service Charter

- 7.1 The *licensee* must establish a *customer service charter* as set out in Schedule 3.

## 8 Customer Consultation

- 8.1 The *licensee* must establish *customer* consultation processes as set out in Schedule 3.

## 9 Memorandum of Understanding

- 9.1 Where the *licensee* is, or intends to, provide *potable water*, the *licensee* must enter into a *MoU* with the *Department of Health* as soon as practicable after the *commencement date*, but not later than 3 months after the *commencement date* without the approval of the *Authority*.

- 9.2 The *MoU* must include provisions:

- (a) specifying that the *MoU* is a legally binding document between the *licensee* and *Department of Health*;
- (b) defining and identifying the following sections in the *MoU*:
  - i. Text;
  - ii. Schedules;
  - iii. Binding Protocols;
  - iv. Water Quality Management Processes and Procedures;
- (c) requiring the *licensee* and *Department of Health* to review and renew the *MoU* not less than once every three years;
- (d) requiring the *licensee* to provide a complete copy of the *MoU* to the *Authority* within one month of entering into the *MoU*;
- (e) requiring the *licensee* to provide any amendments to the *MoU* to the *Authority* within one month of entering into any amendments to the *MoU*;
- (f) specifying quality criteria for drinking water and specifying how these standards will be achieved;

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Licence	Operating Licence <<No>>	Version Date

- 
- (g) requiring that any variations to the quality criteria for drinking water be approved by the Minister for Health;
- (h) specifying a water quality monitoring plan to ensure that drinking water quality criteria are met;
- (i) specifying a notification procedure for the reporting by the *licensee* of information or events which may have risks for public health; and
- (j) requiring an audit by the *Department of Health* on compliance by the *licensee* with its obligations under the *MoU* at least once every three years and the provision of the *audit report* to the *Authority*.
- 9.3 For the avoidance of doubt, clause 9.2 does not limit the provisions that the *MoU* may include.
- 9.4 The *licensee* must comply with the terms of the *MoU*.
- 9.5 The *licensee* must *publish* the Text and Schedules of the *MoU* and any amendments to the Text and Schedules of the *MoU* within one month of entering into the *MoU* or of making amendments to the Text or Schedules of the *MoU*.
- 9.6 The *licensee* must *publish* the *Audit Report* on the *licensee's* web site within 1 month of the completion of the audit.
- 9.7 The *licensee* must *publish* its Drinking Water Quality Reports quarterly or at a reporting frequency specified by the *Department of Health*.
- 10 Transfer of Licence**
- 10.1 This *licence* may be transferred only in accordance with the *Act*.
- 11 Cancellation of Licence**
- 11.1 This *licence* may be cancelled only in accordance with the *Act*.
- 12 Surrender of Licence**
- 12.1 The *licensee* may surrender the *licence* at any time by written *notice* to the *Authority*.
- 12.2 The surrender of the *licence* will take effect on the day that the *Authority* publishes a *notice* of the surrender in the *Gazette*.
- 12.3 The *licensee* will not be entitled to a refund of any fees by the *Authority*.
- 13 Renewal of Licence**
- 13.1 This *licence* may be renewed only in accordance with the *Act*.
- 14 Amendment of Licence**
- 14.1 The *Authority* may, at any time, amend the *licence*:
- (a) on its own initiative; or
- (b) on application by the *licensee*,

in accordance with the *Act* and the procedure specified in clause 14.2.

14.2 Before amending the *licence* under clause 14.1, the *Authority* must:

- (a) provide the *licensee* with written notice of the proposed amendments under consideration by the *Authority*;
- (b) allow 15 *business days* for the *licensee* to make submissions on the proposed amendments; and
- (c) take into consideration those submissions.

14.3 This clause also applies to the substitution of the existing *licence*.

14.4 For avoidance of doubt, the *licensee* will not have to pay an associated application fee or licence fee for the purpose of clause 14.1.

## 15 Accounting Records

15.1 The *licensee* and any *related body corporate* must maintain accounting records that comply with the Australian Accounting Standards Board Standards or equivalent International Accounting Standards.

## 16 Operational Audit

16.1 The *licensee* must, unless otherwise notified in writing by the *Authority*, provide the *Authority* with an *operational audit* within 24 months after the *commencement date*, and every 24 months thereafter.

16.2 The *licensee* must comply, and must require the *licensee's* auditor to comply, with the *Authority's* standard audit guidelines dealing with the *operational audit*, including any minimum requirements relating to the appointment of the auditor, the scope of the audit, the conduct of the audit and the reporting of the results of the audit.

16.3 The *licensee* may seek a review of any of the requirements of the *Authority's* standard audit guidelines in accordance with clause 24.1.

16.4 The independent auditor may be nominated by the *licensee* but must be approved by the *Authority* prior to the audit pursuant to clause 16.1. Should the *Authority* reject the *licensee's* nomination of an independent auditor twice or, in the event that no nomination has been made by the *licensee* within 1 month of the date the audit was due, the *Authority* may choose an independent auditor who will conduct the audit.

## 17 Asset Management System

17.1 The *licensee* must provide for, and notify the *Authority* of, an *asset management system* in respect of the *licensee's* assets within 2 *business days* from the *commencement date* unless otherwise notified in writing by the *Authority*.

17.2 The *licensee* must notify the *Authority* of any material change to the asset management system within 10 *business days* of such change.

17.3 The *licensee* must, unless otherwise notified in writing by the *Authority*:

- (a) conduct an *asset management system review*; and
- (b) provide the *Authority* with a report on the *asset management system review*,

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within 24 months after the *commencement date* and every 24 months thereafter.

- 17.4 The *licensee* must comply, and must require the *licensee's* expert to comply, with the *Authority's* standard guidelines dealing with the *asset management system*, including any minimum requirements relating to the appointment of the expert, the scope of the review, the conduct of the review and the reporting of the results of the review.
- 17.5 The *licensee* may seek a review of any of the requirements of the *Authority's* standard guidelines dealing with the *asset management system* in accordance with clause 24.1.
- 17.6 The independent expert may be nominated by the *licensee* but must be approved by the *Authority* prior to the review pursuant to clause 17.3. Should the *Authority* reject the *licensee's* nomination of an independent expert twice or, in the event that no independent expert has been nominated by the *licensee* within 1 month of the date the review was due, the *Authority* may choose an independent expert who will conduct the review.

## **18 Reporting**

- 18.1 The *licensee* must report to the *Authority*:
1. (a) if the *licensee* is under external administration as defined by the *Corporations Act 2001 (Cwlth)* within 2 *business days*; or
  2. (b) if the *licensee* experiences a significant change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted which may affect the *licensee's* ability to meet its obligations under this *licence* within 10 *business days* of the change occurring.

## **19 Individual Performance Standards**

- 19.1 Performance standards are contained in *applicable legislation*.
- 19.2 The *Authority* may prescribe *individual performance standards* in relation to the *licensee* of its obligations under this *licence* or the *applicable legislation*.
- 19.3 Before approving any *individual performance standards* under this clause, the *Authority* will:
- (a) provide the *licensee* with a copy of the proposed *individual performance standards*;
  - (b) allow 15 *business days* for the *licensee* to make submissions on the proposed *individual performance standards*; and
  - (c) take into consideration those submissions.
- 19.4 Once approved by the *Authority*, the *performance standards* are included as additional *terms and conditions* to this *licence* as set out in Schedule 4.

## **20 Service and Performance Standards**

- 20.1 The *licensee* must comply with the service and performance standards as set out in Schedule 4.

## **21 Provision of Information**

21.1 The *licensee* must provide to the *Authority* any information that the *Authority* may require in connection with its functions under the *Act* in the time, manner and form specified by the *Authority*.

21.2 The *licensee* must comply with the information reporting requirements as set out in Schedule 5.

## 22 Publishing Information

22.1 The *Authority* may direct the *licensee* to *publish* any information within a specified timeframe it considers relevant in connection with the *licensee* or the performance by the *licensee* of its obligations under this *licence*.

22.2 Subject to clause 22.3, the *licensee* must *publish* the information referred to in clause 22.1.

22.3 If the *licensee* considers that the information is confidential it must:

- (a) immediately notify the *Authority*; and
- (b) seek a review of the *Authority*'s decision in accordance with clause 24.1.

22.4 Once it has reviewed the decision, the *Authority* will direct the *licensee* in accordance with the review to:

- (a) *publish* the information;
- (b) *publish* the information with the confidential information removed or modified; or
- (c) not *publish* the information.

## 23 Notices

23.1 Unless otherwise specified, all *notices* must be in writing.

23.2 A *notice* will be regarded as having been sent and received:

- (a) when delivered in person to the addressee; or
- (b) 3 *business days* after the date of posting if the *notice* is posted in Western Australia; or
- (c) 5 *business days* after the date of posting if the *notice* is posted outside Western Australia; or
- (d) if sent by facsimile when, according to the sender's transmission report, the *notice* has been successfully received by the addressee; or
- (e) if sent by email when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee's *water licensing email address*.

## 24 Review of the Authority's Decisions

24.1 The *licensee* may seek a review of a *reviewable decision* by the *Authority* pursuant to this *licence* in accordance with the following procedure:

- (a) the *licensee* must make a submission on the subject of the *reviewable decision* within 10 *business days* (or other period as approved by the *Authority*) of the decision; and

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(b) the *Authority* will consider the submission and provide the *licensee* with a written response within 20 *business days*.

24.2 For the avoidance of doubt, this clause does not apply to a decision of the *Authority* pursuant to the *Act*, nor does it restrict the *licensee*'s right to have a decision of the *Authority* reviewed in accordance with the *Act*.

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## Schedule 1 – Licensee Details

### Water Service (1) << Service Type>>

**1 Name and Address of Licensee**

<<Name>>

<<Address >>

**2 Commencement Date**

<<Date>>

**3 Expiry Date**

<<Date>>

### Water Service (2) <<Service Type>>

**1 Commencement Date**

<<Date>>

**2 Expiry Date**

<<Date>>

### Water Service (3) <<Service Type>>

**1 Commencement Date**

<<Date>>

**2 Expiry Date**

<<Date>>

### Water Service (4) <<Service Type>>

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**1 Commencement Date**

<<Date>>

**2 Expiry Date**

<<Date>>

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# Schedule 3 – Customer Provisions

## 1. Definitions

In this Schedule 3, **Customer Council** means a forum set up by a *licensee* to involve *customers* in direct “round table” feedback about services.

## 2 Customer Service Charter

2.1 The *licensee* must have in place a *customer service charter* that accords with the Authority’s Customer Service Charter Guidelines and the specified principles set out below.

2.3 The *customer service charter*:

- (a) should be drafted in 'plain English'; and
- (b) should address all of the service issues that are reasonably likely to be of concern to its *customers*.

2.4 Different parts of the *customer service charter* may be expressed to apply to different classes of *customers*.

2.5 Any proposed amendment to the *customer service charter* must be forwarded to the *Authority* for approval.

2.6 The *licensee* must make the *customer service charter* available to its *customers* in the following ways:

- (a) by prominently displaying it in those parts of the *licensee*’s offices to which *customers* regularly have access;
- (b) by providing a copy, upon request, and at no charge, to the *customer*, and
- (c) by sending a current copy, or a summary document approved by the *Authority*, to all *customers* at least once in every two year period or as agreed with the *Authority*.

2.7 The *customer service charter* is to be reviewed by the *licensee* at least once in every two year period or as agreed with the *Authority*.

2.8 It is a condition of the *licence* that the *licensee* provides services in a way which is consistent with its *customer service charter*. This condition is not intended to create a statutory duty nor provide any third party with a legally enforceable right or cause of action.

### 3 Customer Complaints

#### **General Clauses**

- 3.1 The *licensee* must have in place, and properly resourced, a process for effectively receiving, recording, managing and, (where possible), resolving *customer complaints* within a timeframe of 15 *business days*.
- 3.2 To ensure the effectiveness of such a process the *licensee* must, as a minimum:
- (a) establish a system for providing each aggrieved *customer* with a unique identifying complaint number;
  - (b) provide an appropriate number of designated officers who are trained to deal with *customer complaints* and who are authorised to, or have ready access to officers who are authorised to make the necessary decisions to settle *customer complaints* or disputes, including where applicable, approving the payment of monetary compensation;
  - (c) establish a complaint resolution protocol which is designed to resolve *customer complaints* or disputes within 15 *business days* of being notified of their existence; and
  - (d) provide a system for accurately monitoring and recording the number, nature and outcome of complaints in order to fulfil the requirements to provide information set out in this *licence*.
- 3.3 Where a dispute arises between a *customer* and the *licensee* regarding a provided or requested water service, the *customer* may refer the dispute to the Department of Water.
- 3.4 Where a dispute has not been resolved within 15 *business days* the *licensee* must inform the *customer* of the option of referring their *complaint* to the Department of Water.
- 3.5 The Department of Water may:
- (a) conciliate the dispute; or
  - (b) direct the *licensee* or *customer* to binding arbitration.
- 3.6 During the process of investigation and conciliation, the *licensee* must make every endeavour to promptly cooperate with the Department of Water's (or its representative's) requests, which must include the expeditious release of any information or documents requested by the Department of Water and the availability of the relevant staff of the *licensee*.
- 3.7 The *licensee* must, on request, provide the Department of Water with details of *complaints* made, names and addresses of *customers* who have made *complaints*, and the manner in which the *complaint* was managed and resolved.

Licensee	<<NAME>>	Version
Licence	Operating Licence <<No>>	Version Date

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## Licence Specific Clauses

### Sewerage Services

- 3.8 The *licensee* must establish a system for recording, managing and resolving *complaints* by *customers* within 15 *business days* regarding a provided or requested water service, or for matters which must be considered by a Local Government Council, within 5 *business days* after the first ordinary Council meeting following the expiry of the 15 *business day* period.
- 3.9 To ensure the effectiveness of such a process the *licensee* must, as a minimum:
- (a) record details of each *customer complaint* and its outcome;
  - (b) provide an officer trained to deal with *customer complaints* who is authorised to, or has access to another officer who has the authority to, make the necessary decisions to settle *customer complaints* or disputes, and where applicable, make recommendations to Council as to the payment of monetary compensation; and
  - (c) make such arrangements as are necessary to ensure that if possible *complaints* can be resolved in the timeframes set out in sub-clause 3.8.
- 3.10 Unless the *complaint* or dispute is a matter in relation to which section 3.22 of the *Local Government Act 1995* applies, where a dispute has not been resolved within 15 *business days* the *licensee* must inform the *customer* of the option of referring their *complaint* to the Department of Water.

### Water Supply Services

- 3.11 The arbitration process must not apply in circumstances where Section 62 of the *Water Agencies (Powers) Act 1984* applies. Section 62 relates to compensation for damage caused by the *licensee* in the exercise of powers of entry. Section 62 has its own method of dispute resolution in that a dispute arising under Section 62 must be heard by a Compensation Court (State Administrative Tribunal) constituted under the *Public Works Act 1902*.
- 3.12 The arbitrator in arriving at a decision must have regard to Section 63 of the *Water Agencies (Powers) Act 1984*, namely that the *licensee* must not be liable for any injury or damage (other than damage of the kind referred to in Section 62 of that Act), occasioned in the exercise or purported exercise of its powers unless negligence is established.
- 3.13 The provisions of the *Commercial Arbitration Act 1985* ("Arbitration Act") apply but once an arbitration is approved by the Department of Water, the *customer* and the *licensee* must enter into an arbitration agreement approved by the Department of Water which will specifically exclude the rights of the parties under Section 38(4)(b) and Section 39(1)(a) respectively under the Arbitration Act and expressly reserve the rights of the parties in relation to:
- (a) an appeal to the Supreme Court by the *customer* or the *licensee* in respect of a decision of the arbitrator that, for the purposes of Section 63 of the *Water Agencies (Powers) Act 1984*, negligence on the part of the *licensee* was or was not established as the case may be;
  - (b) an appeal by the *customer* or the *licensee* to the Supreme Court with the consent of those parties pursuant to section 38(4)(a) of the Arbitration

Act on any question of law arising out of an award as defined in the Arbitration Act; and

- (c) an application by the *customer* or the *licensee* to the Supreme Court with the consent of those parties pursuant to section 39(1)(b) of the Arbitration Act to determine any question of law arising in the course of an arbitration.

3.14 The *customer* must be required to indemnify the arbitrator, the *Authority*, the Department of Water, the Minister and the State of Western Australia in relation to any action, claims or cost arising out of the arbitration process.

## 4 Customer Consultation

### **General Clauses**

4.1 The *licensee* must establish ongoing *customer* consultation processes which both inform *customers* and proactively solicit *customer* opinion on the *licensee's* operations and delivery of services. Acceptable approaches to the satisfaction of this requirement are set out below.

The *licensee* may either:

- (a) establish a *Customer Council*, and consult with the *Customer Council* to facilitate community involvement in issues relevant to the exercise of the *licensee's* levels of service under the *licence*; or
- (b) institute at least two of the following processes:
  - i. Meeting on a regular basis with *customers* to seek comment on issues relevant to the exercise of the *licensee's* levels of service under the *licence*;
  - ii. Publishing a simple newsletter providing basic information about the *licensee's* operations; and/or
  - iii. Establishing other forums for consultation to enable community involvement in issues relevant to the exercise of the *licensee's* obligations under this *licence*.

4.2 The *Authority* must be consulted with respect to the type and extent of *customer* consultation to be adopted by the *licensee*.

4.3 In addition, the *licensee* may, or at the request of the *Authority*, must, establish other forums for consultation, to enable community involvement in issues relevant to the exercise of the *licensee's* obligations under this *licence*.

### **Licence Specific Clauses**

#### **Irrigation Services**

4.4 On an annual basis (prior to the start of each irrigation season) and prior to making major changes to the operation of the irrigation scheme the *licensee* will hold a public meeting to obtain *customer* views on the performance and operation

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of the scheme. The agenda for the annual meeting will include but not be limited to:

- (a) season opening and closing conditions;
- (b) tariffs; and
- (c) scheme operation.

### **Sewerage Services**

- 4.5 Prior to making major changes to the operation of a water service(s), such as the construction of new wastewater treatment works or significant expansion of the sewerage network, the *licensee* will:
- (a) hold a public meeting to obtain *customer* views on the performance and operation of the scheme; or
  - (b) advertise for written submissions on the proposal.
- 4.6 The *licensee* must allow *customers* to raise matters of concern regarding the sewerage system at public question time in accordance with the *Local Government Act 1995*.

## **5 Customer Contracts**

- 5.1 Subject to compliance with this clause 5, the *licensee* may enter into an agreement with a *customer* to provide water services that exclude, modify or restrict the *terms and conditions* of this *licence*.
- 5.2 Subject to clause 5.3, an agreement referred to in clause 5.1:
- (a) must be approved by the *Authority* prior to its commencement; and
  - (b) must not be amended without the prior approval of the *Authority*.
- 5.3 The *licensee* does not need the approval of the *Authority* if the terms that exclude, modify or restrict the *terms and conditions* of this *licence*:
- (a) were in force before the commencement of this *licence*; or
  - (b) have previously been approved by the *Authority* in another agreement that applies to the same class of *customer*.
- 5.4 If a *licensee* enters into an agreement with a *customer* that excludes, modifies or restricts the *terms and conditions* of this *licence*, the *licensee* must *publish* a report annually that includes the following information:
- (a) the total number of agreements entered into by the *licensee*, categorised by location and the type of exclusion, modification or restriction;
  - (b) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and the type of exclusion, modification or restriction;

- (c) the total number of agreements entered into by the *licensee*, categorised by location and by land use; and
- (d) the number of agreements entered into by the *licensee* during the reporting period, categorised by location and by land use.

**6 Customer Surveys**

- 6.1 Not more frequently than every 12 months the *Authority* may require the *licensee* to commission an independent customer survey which must address and conform to the conditions and parameters set out in writing by the *Authority*.

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# Schedule 4 – Service & Performance Standards

## Potable Water Supply

The *licensee* must comply with the following.

Service Activity	How Is It Measured	Performance Indicator / Targets
Customers experiencing an interruption of water supply exceeding 1 hour in duration.	Number of customers experiencing an interruption of water supply exceeding 1 hour in duration.	
Customers that have been supplied at a pressure and flow that meets the standards set out in the licence.	Percentage of customers that have been supplied at a pressure and flow that meets the standards set out in the licence.	

## Sewerage Services

The *licensee* must comply with the following.

Service Activity	How Is It Measured	Performance Indicator / Targets
The number of sewer blockages per 100km of sewer mains.	The number of sewer blockages per 100km of sewer mains.	
Percentage of connected properties experiencing a wastewater overflow.	Percentage of connected properties experiencing a wastewater overflow.	

## Irrigation Services

The *licensee* must comply with the following.

Planned service interruptions.	Number of planned service interruptions.	
Planned service interruptions with 5 business days notice of the interruption provided to affected customers.	Number of planned service interruptions with 5 business days notice of the interruption provided to affected customers.	
Quality of water provided (mg/L of dissolved solids).	Quality of water provided (mg/L of dissolved solids).	
Planned service interruptions with 5 business days notice of the interruption provided to affected customers.	Number of planned service interruptions with 5 business days notice of the interruption provided to affected customers.	

## Schedule 5 – Information Requirements (Reporting)

### 1 Definitions

***Water Compliance Reporting Manual*** means the Water Compliance Reporting Manual approved by the Authority.

### 2 Benchmarking and Performance Monitoring Information

2.1 The *licensee* will provide the *Authority* with data required for performance monitoring purposes as set out in the *Water Compliance Reporting Manual* as amended from time to time.

**Note:** Include reference to the non-financial data to be provided for WC's small potable water and sewerage schemes – see current licence, Sch 3.2

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## Schedule 6 – Other Provisions

### Examples

#### 1 Definitions

**connection** means a point on a [water, wastewater, sewerage, drainage or irrigation] scheme where a *customer* can connect to utilise the service.

#### 2 Obligations to Customers: Availability and Connection of Services

- 2.1 The *licensee* must set out in writing its 'conditions for connection' and make that information available to all applicants for connection and to people inquiring about connection.
- 2.2 The *licensee* must ensure that its services are available for connection on request to any land situated in the *Operating Areas*, subject to the applicant meeting any conditions the *licensee* may determine to ensure safe, reliable and financially viable supply of services to land in the *Operating Areas* in accordance with this *licence* and any *Water Acts*. Satisfactory compliance with the conditions of connection is to be taken as forming an essential requirement of gaining approval for connection to the *licensee's* schemes.
- 2.3 The *licensee* may, with the written agreement of the property owner, discontinue a service to a property where the servicing of the property is not commercially viable.

**Amendment Record Sheet:**

Amendment Date	Description of Amendment

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