



**SUBMISSION ON THE RECOMMENDATION REPORT -
REVIEW OF WATER SERVICES LICENCES AND THE
WATER COMPLIANCE REPORTING MANUAL**

26 May 2008

INTRODUCTION

The Water Corporation has been involved in the Water Industry Reference Group and has provided feedback on the recommendations prior to the Public Submissions. This submission contains comments related to the 3 documents provided by the Authority. These are:

- The recommendation report, including the draft operating licence template,
- The Compliance Manual, and
- The Water Corporation draft operating licence utilising the new framework.

EXECUTIVE SUMMARY

The Water Corporation welcomes the modernisation of water utility operating licences and the move to improve the efficiency and effectiveness of the operating licence regime.

The majority of the proposed enhancements are appropriate to improve the regulation of the water industry however there are several areas that require improvement. These areas are discussed below.

WATER CORPORATION'S RESPONSE TO THE RECOMMENDATION REPORT

<p>Recommendation 33 Schedule 3, Clause 5</p>	<p>The Water Corporation provides 3 types of agreements with customers. Services Provided By Agreement (SPBA), commercial agreements for customers using less than 49kL per day and commercial agreements for customers using more than 49kL per day.</p> <p>SPBA are agreements with domestic or small use customers that exclude, modify or restrict one or more of the service standards in the licence. These are typically pressure, flow, continuity and/ or drinking water quality. The Water Corporation has a standard contract with these customers that identifies the particular service standard variation. Under Clause 5.3 each new agreement will not need to be reviewed by the Authority.</p> <p>Commercial agreements usually vary for each customer. Therefore, standard contracts are not possible and, under this draft clause, each commercial contract that modifies the performance standards, even if it modifies performance for the better, will require approval by the Authority.</p> <p>Some commercial agreements are undertaken within a tight time frame. The added time for Authority approval may, in some cases, have a significant negative impact on the commercial customer's ability to deliver their obligations. Most large consumers undertaking commercial contracts have the agreement reviewed and negotiated by their lawyers, either internal or external.</p> <p>The Code of Conduct for the Supply of Electricity to Small Use Customers 2008 defines a customer as one "who consumes not more than 160 MWh of electricity per annum." We note from this that there is a distinction between small use and commercial customers and that only small use</p>
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	<p>customers' contracts are overseen by the Authority.</p> <p>Current Water utility regulation does not distinguish small use customers from larger commercial users.</p> <p>The Water Corporation policy for commercial contracts requires agreements to be negotiated "where it is in the interests of both the customer and the Corporation." This is to ensure a customer is not unfairly treated.</p> <p>RECOMMENDATION</p> <p>The Water Corporation proposes Section 5:</p> <ol style="list-style-type: none"> 1 defines consumers of more than 3kL per day as large commercial customers, but excluding farmlands customers. This quantity is used in pricing head works for commercial agreements and represents roughly 2 and a half times the highest average annual residential water supplied (as reported in WA in the National Performance Report 2006-2007, Geraldton at 457kL). 2 be amended to reflect commercial agreements for capacity above 3kL per day be excluded from the requirement of Authority approval.
<p>Recommendation 44 Definitions</p>	<p>applicable legislation includes:</p> <ol style="list-style-type: none"> (a) the Act; and (b) the Regulations; and (c) relevant Codes. <p>The term "applicable legislation," is used in 3 different ways in the licence; the Authority has the power to direct the Corporation to correct or amend a breach of <i>applicable legislation</i>, performance standards are contained in <i>applicable legislation</i> and the operational audit is an audit of the Corporation's effectiveness to meet the performance standards set out in <i>applicable legislation</i>.</p> <p>The Corporation believes the use of the word "includes" provides an unnecessary level of uncertainty about what the applicable legislation and performance standards are, and could potentially give rise to overlap of regulation by 2 or more Government Agencies. In order to avoid the possibility of a costly legal debate about the limit of the Authority's powers, and provide certainty as to the Corporation's obligations, a more narrow definition of <i>applicable legislation</i> is proposed.</p> <p>RECOMMENDATION</p> <p>The Corporation proposes the word <i>includes</i> is removed and replaced with <i>means</i>. The word <i>means</i> provides clarity as to the exact legislation that the Corporation can be regulated by the Authority.</p>