



# Water Services Operating Licence

Shire of Brookton

WL12, Version 3, 18 November 2013

**Economic Regulation Authority**

WESTERN AUSTRALIA

**WATER SERVICES ACT 2012**

Licensee Name:	Shire of Brookton ABN 74 164 408 055
Licence Number:	WL12
Commencement Date:	29 April 1996
Version Number:	3
Version Date	18 November 2013
Expiry Date	29 April 2021

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Signed by the Chairman of the Economic Regulation Authority

18 /11/ 2013

## WATER SERVICES OPERATING LICENCE

### 1. Definitions and Interpretation

**Act** means the *Water Services Act 2012* (WA).

**amendment date** means 18 November 2013.

**applicable legislation** includes:

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

**asset management system review** means an assessment of the matters set out in section 24(2) of the *Act*.

**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* and includes the *Customer Service Code*.

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

**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.<sup>1</sup>

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

**customer contract** means a "standard customer contract" referred to paragraph (a) of the definition of "standard terms and conditions of service" in section 71(1) of the *Act*.

**Customer Contract Guidelines** means the guidelines relating to the content of the *licensee's customer contract* issued by the *Authority*, as replaced or varied from time to time.

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<sup>1</sup> Standard AS ISO 10002 – 2006 Customer satisfaction – Guidelines for complaints handling in organizations, section 3.2.

**Customer Services Code** means the *Water Services Code of Conduct (Customer Service Standards) 2013* as amended or replaced from time to time.

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

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

**drainage services** has the meaning in section 3 of the *Act*.

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

**financial hardship policy** means a policy referred to in clause 26 of the *Customer Service Code*.

**Financial Hardship Policy Guidelines** means the guidelines relating to financial hardship policies for water services issued by the *Authority*, as replaced or varied from time to time.

**general works** has the meaning in section 134 of the *Act*.

**individual performance standards** mean any individual performance standards approved by the *Authority* pursuant to clause 13 and specified in Schedule 3 of the *licence*

**irrigation services** has the meaning given to that term in section 3 of the *Act*.

**last resort supply plan** has the meaning given to that term in section 50 of the *Act*.

**licence** means:

- (a) this document (excluding the title page and the second page of this document);
- (b) any *Schedules* to this document; and
- (c) any *individual performance standards* approved by the *Authority* pursuant to clause 13.

**licensee** means Shire of Brookton, ABN 74 164 408 055.

**major works** has the meaning in section 133 of the *Act*.

**MoU** means the memorandum of understanding referred to in clause 31 as duly amended from time to time.

**National Performance Framework: rural performance reporting indicators and definitions handbook** means the handbook initially produced by the National Water Commission of the same name as amended or replaced from time to time.

**National Performance Framework: urban performance reporting indicators and definitions handbook** means the handbook initially produced by the National Water Commission of the same name as amended or replaced from time to time.

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

**non-residential customer** means a *customer* who is not a *residential customer*.

**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)** has the meaning given to that term in section 3 of the *Act* and is the area specified in Schedule 1.

**operational audit** means an assessment of the matters set out in section 25(2) of the *Act*.

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

**potable water supply services** means the collection, treatment, transfer or delivery of water supplied from *water service works* 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* website; or
- (b) sending the report or information to the *Authority* to be published on the *Authority's* website.

**Regulations** means any subsidiary legislation made under the *Act*, including but not limited to *Water Services Regulations 2013*.

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

**residential customer** means a *customer* to which *water services* are sold or supplied in respect of the place used solely or primarily as the *customer's* dwelling.

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

- (a) clause 13.2;
- (b) clause 14.4;
- (c) clause 17.3; and
- (d) clause 20.6

of this *licence*.

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

**sewerage services** has the meaning given to that term in section 3 of the *Act*.

**supplier of last resort** has the meaning given to that term in section 50 of the *Act*.

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

**Water Compliance Reporting Manual** means the reporting manual issued by the *Authority*, as replaced or varied from time to time.

**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** means the service or services that the *licensee* is authorised to provide by this *licence* being a *drainage service*, *irrigation service*, *sewerage service* and / or *water supply service* as more particularly described in Schedule 1.

**water service works** has the meaning given to that term in section 3 of the *Act*.

**water services ombudsman scheme** means a scheme approved under section 65 of the *Act*.

**water supply service** has the meaning given to that term in section 3 of the *Act*.

**works holding arrangement** means an arrangement as set out in section 23 of 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 [Section 14 of the Act]**

- 3.1 This *licence* commences on the *commencement date* and continues until the earlier of:
  - (a) the cancellation of the *licence* pursuant to clause 7 of this *licence*;
  - (b) the surrender of the *licence* pursuant to clause 8 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 with applicable legislation [Section 26 and 27 of the Act]**

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

- 5.2 The *licensee* must comply with any code of practice made by the Minister under section 26 of the *Act* to the extent to which it applies to the *licensee*.
- 5.3 The *licensee* must comply with any code of conduct made by the *Authority* under section 27 of the *Act* to the extent to which:
- (a) it applies to the *licensee*; and
  - (b) it is not inconsistent with the terms and conditions of this *licence*.
- 5.4 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. Transfer of Licence [Section 15 of the Act]**
- 6.1 This *licence* may be transferred only in accordance with the *Act*.
- 7. Cancellation of Licence for Serious Default [Section 34 of the Act]**
- 7.1 This *licence* may be cancelled for serious default in accordance with the *Act*.
- 8. Cancellation of Licence by the licensee [Section 18 of the Act]**
- 8.1 The *licensee* may apply to the *Authority* to request cancellation of the *licence* at any time by written *notice* to the *Authority*.
- 8.2 The *Authority* may cancel the *licence* in accordance with the *Act*.
- 8.3 The *licensee* will not be entitled to a refund of any fees by the *Authority*.
- 9. Renewal of Licence [Section 13 of the Act]**
- 9.1 This *licence* may be renewed only in accordance with the *Act*.
- 10. Amendment of Licence by the licensee [Section 18 of the Act]**
- 10.1 The *licensee* may, at any time, apply to the *Authority* to amend the *licence* in accordance with the *Act*.
- 11. Amendment of licence by the Authority [Section 17 of the Act]**
- 11.1 The *Authority* may, at any time, amend the *licence* on its own initiative in accordance with the *Act* and the procedure specified in clause 11.2.
- 11.2 Before amending the *licence* under clause 11.1, 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.

11.3 Any amendments made to the *licence* will come into effect in accordance with the *Act* unless a longer period is specified by the *Authority* or a shorter period is agreed to by the *Authority* and the *licensee*.

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

11.5 For avoidance of doubt, the *licensee* will not have to pay an associated application fee or *licence* fee for the purpose of clause 11.1.

## **12. Accounting Records**

12.1 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.

## **13. Individual Performance Standards**

13.1 The *licensee* must comply with the *individual* performance standards as set out in Schedule 3.

13.2 The *Authority* may prescribe *individual performance standards* in relation to the *licensee* of its obligations under this *licence* or the *applicable legislation*.

13.3 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.

13.4 Once approved by the *Authority*, the *individual performance standards* are included as additional *terms and conditions* to this *licence* as set out in Schedule 3.

## **14. Operational Audit [Section 25 of the Act]**

14.1 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.

14.2 The *operational audit* must be conducted by an independent expert appointed by the *Authority* in its sole discretion. The *Authority* will determine the terms of the appointment of the *independent expert*.

14.3 Before appointing an independent expert the *Authority* will:

(a) consult with the *licensee* in a manner and form determined by the *Authority*; and

(b) take into account any relevant matters raised by the *licensee* from that consultation.



14.4 The *licensee* must cooperate with the independent expert and comply, with the *Authority's* standard audit guidelines dealing with the *operational audit*.

## 15. Reporting a Change in Circumstances

15.1 The *licensee* must report to the *Authority*:

(a) if the *licensee* is under external administration as defined by the *Corporations Act 2001* (Cwth) within two *business days*; or

(b) if the *licensee*:

(i) experiences a material change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted; and

(ii) which may materially affect the *licensee's* ability to meet its obligations under this *licence*,

within 10 *business days* of the change occurring; or

(c) if the:

(i) *licensee's* name;

(ii) *licensee's* ABN;

(iii) *licensee's* address;

(iv) description of the *water service works*,

changes, within 10 *business days* of the change occurring; or

(d) if the *licensee provides or undertakes water service works* that are *major works* or *general works*, within 10 *business days* of the provision or undertaking occurring.

## 16. Provision of Information

16.1 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*.

16.2 The *licensee* must comply with any information reporting requirements prescribed by the *Authority*, including but not limited to the provisions of the *Water Compliance Reporting Manual* which apply to the *licensee*.

16.3 Without limiting clause 16.1, the *licensee* must provide the *Authority* with the data required for performance reporting purposes that is specified in:

(a) the *Water Compliance Reporting Manual*.

(b) Not used.

(c) Not used.

## **17. Publishing Information**

- 17.1 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*.
- 17.2 Subject to clause 17.3, the *licensee* must *publish* the information referred to in clause 17.1.
- 17.3 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 19.
- 17.4 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.

## **18. Notices**

- 18.1 Unless otherwise specified, all *notices* must be in writing.
- 18.2 A *notice* will be regarded as having been sent and received:
- (a) when delivered in person to the addressee; or
  - (b) three *business days* after the date of posting if the *notice* is posted in Western Australia; or
  - (c) five *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*.

## **19. Review of the Authority's Decisions**

- 19.1 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
  - (b) the *Authority* will consider the submission and provide the *licensee* with a written response within 20 *business days*.

19.2 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*.

## **20. Asset Management System [Section 24 of the Act]**

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

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

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

20.4 The *asset management system review* must be conducted by an independent expert appointed by the *Authority* in its sole discretion. The *Authority* will determine the terms of the appointment of the independent expert.

20.5 Before appointing an independent expert the *Authority* will:

(a) consult with the *licensee* in a manner and form determined by the *Authority*; and

(b) take into account any relevant matters raised by the *licensee* from that consultation.

20.6 The *licensee* must cooperate with the independent expert and comply with the *Authority's* standard guidelines dealing with the *asset management system review*.

## **21. Water Services Ombudsman Scheme [Section 70 of the Act]**

21.1 If the *Authority* has approved a *water services ombudsman scheme*, the *licensee* must not supply *water services* to *customers* unless the *licensee* is:

(a) a member of the *water services ombudsman scheme*; and

(b) bound by, and compliant with, any decision or direction of the water services ombudsman under the *water services ombudsman scheme*.

## **22. Standard Terms and Conditions of Service [Section 71 of the Act]**

22.1 Subject to:

(a) the *Act*; and

(b) the terms of a *customer contract* (if any) that apply to the *water service*,

the terms and conditions of service in this *licence* that apply to the *water service* are set out in Schedule 4.

22.2 The terms in Schedule 4 may be supplemented by terms published from time to time by the *licensee* on the *licensee's* website or as otherwise prescribed.

### **23. Customer Contract**

23.1 The *licensee* must, if directed by the *Authority*, submit a draft *customer contract* for approval by the *Authority*.

23.2 The *licensee* must comply with any *Customer Contract Guidelines* which apply to the *licensee*.

23.3 Once approved, the *licensee* may amend the *customer contract* only with the *Authority's* approval.

23.4 The *licensee* may amend the *customer contract* at any time by submitting to the *Authority*:

(a) a proposed amendment to the *customer contract*; or

(b) a proposed substituted *customer contract*.

23.5 The *Authority* may:

(a) approve the amendment to the *customer contract* or substituted *customer contract*; or

(b) specify the amendments the *licensee* must make to the amended or substituted *customer contract* before the *Authority* will amend the *customer contract*,

and notify the *licensee* of its decision within 10 *business days* of making the decision.

23.6 The *Authority* may, at any time, by *notice* in writing, direct the *licensee* to amend the *customer contract* by specifying:

(a) the amendments to be made to the *customer contract*; and

(b) the latest date at which the amendments will come into force.

### **24. Non Standard Terms and Conditions of Service**

24.1 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:

(a) *terms and conditions* of this *licence*; or

(b) the requirements of the *Customer Services Code*.

24.2 Subject to clause 24.3, an agreement referred to in clause 24.1:

(a) must be approved by the *Authority* prior to its commencement; and

(b) must not be amended without the prior approval of the *Authority*.

- 24.3 The *licensee* does not need the approval of the *Authority* if:
- (a) the terms that exclude, modify or restrict the *terms and conditions* of this *licence* or the requirements of the *Customer Services Code* have previously been approved by the *Authority* in another agreement that applies to the same class of *customer*; or
  - (b) the terms that exclude, modify or restrict the *terms and conditions* of this *licence* were in force before the *amendment date*.
- 24.4 If a licensee enters into an agreement with a customer that excludes, modifies or restricts the terms and conditions of this licence, or the Customer Services Code, 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.

## **25. Supplier of Last Resort [Section 60 of the Act]**

- 25.1 If the *licensee* is appointed the *supplier of last resort* for a designated area under the *Act*, the *licensee* must perform the functions of the *supplier of last resort* for the designated area and the class of *water service*, comply with the duties imposed in relation to those functions under the *Act* and carry out its operations under or for the purposes of the *last resort supply plan* in accordance with the *Act*.

## **26. Duties of the licensee [Section 29 of the Act]**

- 26.1 The *licensee* must:
- (a) comply with the duties imposed on the *licensee* under the *Act*; and
  - (b) carry out the *licensee's* operations under, or for the purposes of, the *licence* in accordance with the *Act*.

## **27. Provision of water services [Section 21 of the Act]**

- 27.1 The *licensee* must provide the *water service* set out in Schedule 1:
- (a) to persons entitled to the *water service* under the *Act*, except to the extent otherwise provided for by the *Act*; and
  - (b) if requested, to any other person within the *operating area* on reasonable terms, unless the provision of the *water service* is not financially viable or is otherwise not practicable.

**28. Provision of water services outside operating area [Section 22 of the Act]**

- 28.1 If the *licensee* provides a *water service* outside of the *operating area* specified for that *water service*, the *licensee* must:
- (a) notify the *Authority* as soon as is practicable before commencing to provide the *water service*; and
  - (b) apply to amend the *licence* in accordance with clause 10 unless otherwise notified by the *Authority*.

**29. Works holding arrangements [Section 23 of the Act]**

- 29.1 The *licensee* must hold, or otherwise be subject to a *works holding arrangement* in respect of, all *water service works* used for the provision of a *water service*.

**30. Hardship Policy**

- 30.1 Clause 26 of the *Customer Services Code* requires applicable *licensees* to have a *financial hardship policy*. Notwithstanding clause 26(1) of the *Customer Services Code*, the *licensee* is not required to have a *financial hardship policy* where the *licensee* supplies *water services* solely to:

- (a) *non-residential customers*; or
- (b) members of the *licensee*.

- 30.2 The *Authority* may produce *Financial Hardship Policy Guidelines* from time to time.

- 30.3 The *licensee* must comply with any *Financial Hardship Policy Guidelines* which apply to the *licensee*.

**31. Memorandum of Understanding**

- 31.1 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*.

- 31.2 The *MoU* must:

- (a) specify that the *MoU* is a legally binding document between the *licensee* and *Department of Health*;
- (b) 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, or other such time as notified by the *Department of Health*, and the provision of the *audit report* to the *Authority*.

- 31.3 The *licensee* must comply with the terms of the *MoU*.

- 31.4 The *licensee* must publish the *MoU* and any amendments to the *MoU* on the *licensee's* website within one month of entering into the *MoU* or of making amendments to the *MoU* in a form agreed with the *Department of Health*.

- 31.5 The *licensee* must publish the *audit report* on the *licensee's* website within one month of the completion of the audit.

- 31.6 The *licensee* must *publish* any other reports required by the *Department of Health* or set out in the *MoU* on the *licensee's* website quarterly or at a reporting frequency specified by the *Department of Health*.

## Schedule 1 – Licence Details

### 1. Activities Authorised under this Licence

1.1 In accordance with clause 2, the *licensee* is authorised by this *licence* to provide:

(a) *water supply services*:

(i) Not Used

(ii) *non-potable water supply services*

(b) *sewerage services*

(c) Not Used

(d) Not Used

### 2. Operating Area

2.1 The *operating area* is set out in Plan Number:

OWR-OA-017(C)

### 3. Commencement Date

3.1 29 April 1996

### 4. Expiry Date

29 April 2021



## Schedule 2 – Customer Provisions

### 1. Customer Complaints

- 1.1 This clause will apply until such time as the *Authority* approves a *water services ombudsman scheme*.
- 1.2 Where the *customer* makes a *complaint* regarding a provided or requested *water service*, the *customer* may refer the *complaint* to the *Department of Water*.
- 1.3 Where a *complaint* has not been resolved to the *customer's* satisfaction within 15 *business days* the *licensee* must inform the *customer* of the option of referring the *complaint* to the *Department of Water*.
- 1.4 The *Department of Water* may:
- (a) conciliate the *complaint*; or
  - (b) direct the *licensee* or *customer* to binding arbitration.
- 1.5 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 shall include the expeditious release of any relevant information or documents requested by the *Department of Water* and the availability of the relevant staff of the *licensee*.
- 1.6 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 resolved.

## **Schedule 3 – Performance Standards**

### **POTABLE WATER**

1. Not Used
2. Not Used

### **SEWERAGE**

3. Not Used

### **DRAINAGE**

4. Not Used

### **IRRIGATION**

5. Not Used

## **Schedule 4 – Standard Terms and Conditions of Service**

## **Schedule 5 – Other Provisions**

**Amendment Record Sheet**

Version Date	Description of Amendment
15 May 2009	Remove requirement to report incidents
18 November 2013	Amendment by substitution - <i>Water Services Act 2012</i>