



Water Services Operating Licence

Shire of Denmark

WL39, Version 5, 18 November 2013

Economic Regulation Authority

WESTERN AUSTRALIA

WATER SERVICES ACT 2012

Licensee Name:	Shire of Denmark ABN 24 355 062 623
Licence Number:	WL39
Commencement Date:	28 February 2005
Version Number:	5
Version Date	18 November 2013
Expiry Date	31 May 2031

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.¹

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.

¹ 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 Denmark, ABN 24 355 062 623.

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 If the *licensee* is supplying, or intends to supply, *water services* (other than *non-potable water supply services*) to a *residential customer*, the *licensee* must have a *financial hardship policy*. Notwithstanding clause 26(1) of the *Customer Service 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) Not used

(c) Not used

(d) Not used

2. Operating Area

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

OWR-OA-294(C)

3. Commencement Date

3.1 28 February 2005

4. Expiry Date

4.1 31 May 2031

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
21 December 2010	List clauses 4.5 and 4.6 in Schedule 3 as “Not applicable” and remove “and Sewerage Services” from the title in Schedule 2
3 December 2012	Correct reference to map OWR-OA-294(B) in Schedule 2 and update to Economic Regulation Authority office address and website on cover page.
18 November 2013	Amendment by substitution – <i>Water Services Act 2012</i>