



Our Ref: EHB-00139
Enquiries: Brian Labza 9388 4979

Mr Rasmus Moerch
Assistant Director, Licensing
Economic Regulation Authority
PO Box 8469
Perth BC WA 6849

Dear Mr Moerch,

CONSULTATION ON WATER LICENCE REVIEW 2016 – DISCUSSION PAPER

Thank you for the opportunity to submit comments to the Economic Regulation Authority (the Authority) on the "*Water Licence Review 2016 - Discussion Paper*", as published in February 2016.

The Department of Health supports the overall thrust and intent of the Review and commends the Authority on preparing such a comprehensive document. We have also noted that the proposed timeline posits new licences being issued in June 2016.

Our comments, provided in the attached document, relate to terms and conditions associated with specific aspects of water licenses.

Should you need further information, please do not hesitate to contact Mr Richard Theobald, Manager Water Unit, on (08) 9388 4967.

Yours sincerely


Dr Michael Lindsay
ACTING DIRECTOR
ENVIRONMENTAL HEALTH DIRECTORATE

3 March 2016

Att.

DEFINITIONS AND INTERPRETATIONS

Use of term “provide” and “water provider”

The term “provide” has a specific meaning set out in the *Water Services Act 2012* (the Act) that relates to providing a water service, yet it appears to also be used in licence documents as if it means “supply” (i.e providing water as a product without referring to a service, rather than providing a “water service”).

It is suggested that use of the term “provide” in licence documents is restricted to the context stipulated in the Act and in relation to exchanging information, but any context of “providing water” that is about the liquid and not about a water service is changed to “supplying water”.

This appears in the definitions of “non-potable water supply services” and “potable water supply services” in section 7 of the licences, as well as clause 6.1.1.

Similarly, the term “water providers” appears (uniquely) in the text relating to the financial hardship policy, as discussed overleaf, and needs to be corrected to accord with the terms used elsewhere in the Act and licence documents.

Use of term “potable water” and related terms

DOH recommends that all uses of the term “potable water” and “non-potable water” in licence documents are changed to “drinking water” and “non-drinking water” respectively.

The change is necessary so that the licence provisions reflect industry, water regulatory and public health regulatory standard practice, in which the term “drinking water” is universally used in Australia when referring to water that is intended for drinking and the term “non-drinking water” is universally used when referring to water that is not intended for drinking.

In particular, the MOU’s required with the DOH under the potable water licences (currently clause 31 but proposed to be clause 6) are entitled “*Memorandum of Understanding between the Department of Health and [licensee name] for Drinking Water*”, reflect risk management strategies pursuant to the “*Australian Drinking Water Guidelines*”, use the term “drinking water” throughout and do not refer to “potable water” in any significant way.

Retention of the term “potable water” it is suggested is likely to cause confusion and, as far as can be ascertained, is not stipulated by the Act in this context.

In section 7, the definition proposed is:

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

Apart from not referring to drinking water, the main problem with this definition is that it self-references “potable water” in its own definition and adds in “safe” without a suitable context.

The preferred definition is:

drinking water is water that is intended for human consumption or for purposes connected with human consumption, such as the preparation of food or the making of ice for consumption or for the preservation of unpackaged food, whether or not the water is used for other purposes;

[source: *Safe Drinking Water Act 2004* (Vic) and *Safe Drinking Water Act 2011* (SA)]
[If it is desired, **non-drinking water** is any water that is not drinking water.]

Proposed section 6 (Health)

DOH recommends that the title to this section is amended from “Health” to “Drinking Water”, to clarify what it refers to, rather than the body that is administering the provisions therein.

Clause 6.1.1 stipulates that “... *the licensee must enter into a MoU with the Department of Health as soon as practicable after the commencement date*” but nowhere in section 6 is it stated explicitly that the MOU is intended to cover the supply of drinking water by the licensee.

It is recommended that clause 6 includes text that sets out that the MOU covers that fact.

It is also recommended that clause 6.1.1 is redrafted from “... as soon as practicable after the commencement date” to “... as soon as practicable after the commencement date or as otherwise agreed with the Department of Health”.

This will provide greater flexibility in timetabling the MOU’s and to allow for circumstances where a licensee has a water licence but is not yet supplying water to customers.

In summary, clause 6.1.1 should read (new text in red, deleted text struck through):

“Where the *licensee* ~~is-supplies~~, or intends to **supply**, ~~provide potable~~ **drinking water**, the licensee must enter into a *MoU* with the *Department of Health* **about the supply of drinking water** as soon as practicable after the commencement date **or as otherwise agreed with the *Department of Health*.**”

Clause 6.1.4 states:

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*.

All MOU’s, including those prepared under previous licences, comprise parts that can be published, such as the main text and Schedules, and parts that contain operationally confidential information and are customarily not published, such as the Binding Protocols.

It is therefore essential that clause 6.1.4 allows for some parts of the MOU or attachments thereto to remain confidential (i.e. should not be published within the meaning of the licence).

Water that is not drinking water

Section 5 of Schedule 2 – Performance Standards (for irrigation) is proposed to state:

“The licensee must provide annual notification to all customers provided with water for irrigation purposes that the water supplied is not suitable for drinking.”

The DOH recommends that a provision such as this applies to all licencees who provide non-drinking water to customers, or who may make non-drinking water publicly available (such as in public open space, or for recreational purposes, or from a tap or stand pipe controlled by the licencee). At the moment it appears only under the ‘Irrigation’ section and only applies to the irrigation licencees’ customers.

These matters can be set out in Section 2 of Schedule 2 – Non-potable water (to be relabelled non drinking water), which is presently marked as “Not used”.

Proposal 5 - Financial hardship policy

The text proposes that:

1.1 Requirement for approved financial hardship policy

1.1.1 Where the licensee intends to supply water services to customers other than non-residential customers or members of the licensee, the licensee must notify the Authority and must have an approved financial hardship policy in accordance with clause 26 of the Code of Conduct prior to any such supply.

1.1.2 For the purposes of clause 1.1, a water service does not include non-potable water supply services, except where the non-potable water supply service is supplied on the basis that the customer is responsible for treating the water to make it fit for humans to drink.

The text under clause 1.1.2 is not sufficiently clear as to the circumstances that it applies to.

The Department of Health (DOH) is concerned that this text appears to imply that there is a basis of a water service where "... *the customer is responsible for treating the water to make it fit for humans to drink*". We are not aware of any service that is described in these words, that so clearly places an onus on the customer to do something as a result of a type of water service, as opposed to an onus on the supplier to provide the customer with suitable advice.

The correct form of nomenclature when describing a water service in licence documents is for a drinking water service, where the water that is supplied is suitable for drinking at the point of supply, or a non-drinking water service, where the water supplied is not suitable for drinking at the point of supply and the customer is clearly so advised and also the non-drinking water service provider clearly explains what purpose(s) that water is fit for.