

Water Licence Review 2019

Issues Paper

24 April 2019

Economic Regulation Authority

WESTERN AUSTRALIA

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Economic Regulation Authority

4th Floor Albert Facey House
469 Wellington Street, Perth

Mail to:

Perth BC, PO Box 8469
PERTH WA 6849

T: 08 6557 7900

F: 08 6557 7999

E: info@erawa.com.au

W: www.erawa.com.au

National Relay Service TTY: 13 36 77
(to assist people with hearing and voice impairment)

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Invitation to make submissions

Submissions are due by 4:00 pm WST, Friday, 17 May 2019

The ERA invites comments on the matters discussed in this paper and any other issues or concerns that are not already raised in this paper but are within the scope of the water licence review.¹

We would prefer to receive your comments via our online submission form <https://www.erawa.com.au/consultation>

You can also send comments through:

Email: publicsubmissions@erawa.com.au
Post: PO Box 8469, PERTH BC WA 6849
Fax: 08 6557 7999

Please note that submissions provided electronically do not need to be provided separately in hard copy.

All submissions will be made available on our website unless arrangements are made in advance between the author and the ERA. This is because it is preferable that all submissions be publicly available to facilitate an informed and transparent consultative process. Parties wishing to submit confidential information are requested to contact us at info@erawa.com.au.

For further information please contact

General Enquiries

Caroline Coutts-Kleijer
Ph: 08 6557 7900
licensing@erawa.com.au

Media Enquiries

Natalie Warnock
Ph: 08 6557 7933 | Mob: 0428 859 826
media@erawa.com.au

¹ Section 1.2.2 sets out the scope of the review.

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Executive summary

The Economic Regulation Authority is the Western Australian regulator for electricity, gas and water services licences.

To make sure it maintains a best practice licensing regime, the ERA regularly reviews the licences it administers. The last review of water licences took place in 2016.

The current review is limited to the format and terms and conditions of the template water licence. The water licensing framework, which is the responsibility of the Minister for Water, and the *Water Services Code of Conduct (Customer Service Standards) 2018* will not be considered.

The current licence templates have required few modifications since they were first developed. Licensees have rarely needed to apply for amendments to the generic licence templates. Based on the ERA's experience administering the water licensing scheme, and feedback received from licensees, it appears that in general the current licence templates are achieving their intended goals.

This Issues Paper summarises the ERA's proposed changes to the template water licence, but stakeholders are invited to comment on any matter that is within the scope of the review.²

In its review, the ERA has sought to meet the objectives of the licensing scheme while minimising the regulatory burden on licensees.

Proposed amendments to the template water licence

The Issues Paper includes seven proposals for amendments to the template water licence. It also proposes administrative amendments which are listed in Appendix 1.

Removal of contract provisions

The template water licence currently includes provisions for customer contracts and terms and conditions of services (together 'contracts'), which allow the ERA to:

- Direct a licensee to submit a draft customer contract to the ERA for approval (clause 5.1).
- Specify in the licence, the terms and conditions under which a licensee must provide a water service (clause 5.2).
- Approve terms and conditions, agreed between a licensee and a customer, that deviate from the licence or the *Water Services Code of Conduct (Customer Service Standards) 2018* (clause 5.3).

The ERA's approval role is based only on the template water licence; neither the *Water Services Act 2012*, nor the regulations made under the Act, give the ERA an express statutory authority to approve contracts.

Without a statutory approval role, the template water licence cannot provide the ERA with an approval role for contracts. The ERA therefore proposes to delete clauses 5.1 to 5.3

² Section 1.2.2 sets out the scope of the water licence review.

It is a policy matter for Government to decide whether the ERA should have an approval role for contracts and, if so, to specify the basis on which the ERA should approve or not approve contracts.

The ERA expects that deleting clauses 5.1 and 5.2 will not significantly affect licensees or customers. To date, the ERA has not approved or prescribed any contracts under clauses 5.1 and 5.2. Also, customers who are unhappy with the water service they are receiving can raise their concerns with the Energy and Water Ombudsman.

Deleting clause 5.3 is likely to affect licensees who have entered into contracts that are inconsistent with the licence, especially the irrigation service standards set out in Schedule 2. Licensees generally contract out of the performance standards if the cost of providing the service at the prescribed standard is considered prohibitive.

To ensure licensees can continue to provide services outside of the standards set out in Schedule 2, the ERA proposes to remove the performance standards from the template water licence.

Removal of the performance standards

The performance standards set out in Schedule 2 of the template water licence cover potable water services (pressure and flow), drainage services, and irrigation services.

Many of the standards set out in Schedule 2 are 'design' standards. For example, the performance standards for potable water and drainage services require licensees to design, contract, operate and maintain their works to a certain standard. They do not oblige licensees to provide their potable water or drainage services to customers at a minimum standard.

The ERA proposes to delete the standards as it considers that setting performance standards for water licensees is a policy matter for Government.

As explained earlier, the proposed deletion will also ensure that licensees can continue to provide services outside of the standards set out in Schedule 2.

The ERA expects that deleting the performance standards will not significantly affect licensees or customers, in part because these standards are so widely applied in the industry that the services in Western Australia are designed to meet them in most circumstances.

Also, licensees and customers already regularly agree to a supply arrangement outside the performance standards. For example, at 30 June 2018, the Water Corporation had more than 12,000 such agreements in place.

The ERA intends to retain the requirement for licensees to notify customers if their potable water supply falls outside of the pressure and flow ranges prescribed in the licence. This is an important protection as it allows customers to take remedial action, for example by installing a pressure reducing valve or a pump.

Consistency between licences

Most other changes the ERA has proposed are to increase consistency between the different licences the ERA administers. Licence clauses in the template electricity, gas and water licences should, where possible, use consistent language and formatting.

In 2018, the ERA reviewed electricity licences and, where possible, it intends to amend the water licences to be consistent.

Summary of proposals

Proposal 1

Delete clause 3.3.1(a) [now clause 4.3.1(a)] from all water licences other than the licences of the three water corporations.

Proposal 2

Delete clauses 5.1 to 5.3.

Proposal 3

Delete the definitions of 'amendment date', 'customer contract' and 'Customer Contract Guidelines' from clause 7.1.1 [now clause 1.1.1].

Proposal 4

Delete the performance standards from Schedule 2.

Proposal 5

Insert the following new clause in Schedule 3:

1.2 Notification if pressure or flow falls outside of the standard range

1.2.1 The licensee must notify:

- (a) a new customer upon purchase of the affected property as soon as practicable; and
- (b) an existing customer at least annually,

if the pressure and flow of the water supplied to the customer's premises falls outside of the applicable standard pressure and flow range set out in Table 1.

Table 1: Pressure and flow standards

Area	Minimum Static Pressure (metres of water)	Maximum Static Pressure (metres of water)	Minimum Flow (litres per minute)
Water Corporation Perth Metropolitan	15	100	20
Water Corporation Country Urban Areas	13	100	20
All other water licences	15	100	20

1.2.2 The notification in clause 1.2 must advise the customer whether the pressure and flow of water supplied to the customer's premises will be lower or higher than the applicable standard pressure and flow range set out in Table 1.

Proposal 6

Delete clause 5.4.

Proposal 7

Delete the definition of 'Financial Hardship Policy Guidelines' from clause 7.1.1 [now clause 1.1.1].

1. Introduction

1.1 Water licensing scheme

1.1.1 *Legislation*

Section 5(1) of the Act states that a person must not provide a water service except under a licence.

The Act provides the ERA with the power to grant or refuse water licence applications, impose and amend licence conditions, and cancel or transfer licences. The ERA exercises its powers taking into account the requirements of the Act including the public interest.

Section 8 of the Act classifies the following water services:

- water supply services (potable or non-potable)
- sewerage services
- irrigation services
- drainage services.

A licence may authorise the provision of one or more classes of water services.

1.1.2 *Licence exemptions*

Under section 7 of the Act, the Minister for Water may exempt any person or class of persons from requiring a licence.

The Department of Water and Environmental Regulation (DWER) administers licence exemptions.³

Licence exemptions are published in the Government Gazette.

1.1.3 *Licences*

The ERA currently administers 21 water licences.⁴

Table 1 shows the current number of licensed water services.

³ Current water service licence exemptions can be found on the [DWER website](#).

⁴ A list of current water licensees can be found on the [ERA website](#).

Table 1: Water licences

Classification	Number of licensed water services	Share %
Water supply (potable)	10	21
Water supply (non-potable)	17	36
Sewerage	14	29
Irrigation	5	10
Drainage	2	4
Total	48	100

The Act provides that a licence can authorise one or more water services.⁵ Therefore, the ERA has a single generic template water licence that covers all four classes of water service.⁶ If needed, the ERA will insert individually tailored licence conditions for one or more supply services into individual licences.

1.2 Water licence review

The ERA periodically reviews its water licences to ensure it maintains a best practice licensing regime. This is the second review of water licences since the Act came into effect in November 2013. The first review was conducted in 2016.

1.2.1 Objectives

The objectives of the 2019 review are to ensure that water licences:

- are consistent with applicable legislation⁷
- minimise licensees' regulatory burden and compliance costs
- have clear and consistent terms and conditions
- are consistent with electricity and gas licences where possible.

1.2.2 Scope

As part of the review, the ERA will examine:

- the format of the template water licence
- the terms and conditions applicable to the template water licence.

The ERA will not examine:

- water legislation, including subsidiary legislation

⁵ The number of licensed water services (48) is greater than the number of licences issued (21) as most licences authorise the provision of more than one service.

⁶ The definition of water supply service in the Act covers the supply of both potable and non-potable water. Table 1 separately reports potable and non-potable water supply for illustrative purposes only.

⁷ Applicable legislation includes the Act and its codes and regulations.

- processes and procedures contained in the ERA's guidelines⁸
- licence amendment proposals that are specific to an individual licensee
- licence exemptions.

1.2.3 Water licence review process

The ERA has published this Issues Paper to seek public comment on proposed amendments to the template water licence. The amendments are proposed by the ERA and licensees.⁹

Depending upon the nature and complexity of the matters raised in submissions on this Issues Paper, the ERA may decide to undertake a second round of public consultation.

The ERA may also decide to convene a reference group to provide it with advice on one or more of the matters raised.

If the matters raised during the initial public consultation do not warrant a second round of public consultation or the establishment of a reference group, the ERA will publish its decision and amend the water licences in accordance with that decision.

Table 2: Timetable

Activity	Time frame
Publish Issues Paper	April 2019
Public submissions	May 2019
Draft licences provided to licensees. Licensees have 15 business days to make submissions on their draft licence.	May 2019
Decision	June 2019
New licences issued	June 2019

1.3 Review of the Act

Section 224 of the Act requires the Minister for Water to carry out a review of the operation and effectiveness of the Act as soon as is practicable after every fifth anniversary of the Act's commencement.

The Minister must prepare a report based on the review and cause it to be laid before each House of Parliament.

As the Act came into effect on 18 November 2013, the first review of the Act was due on 18 November 2018. The ERA understands that the Department of Water and Environmental Regulation has commenced the review. At the time this Issues Paper was released, the Department had not yet published its report on the review.

⁸ The ERA's guidelines can be found on the [ERA website](#).

⁹ The ERA invited licensees to raise matters for inclusion in this Issues Paper.

2. Proposed amendments

This section describes the substantive amendments the ERA proposes to make to the template water licence.

The ERA also proposes to make some administrative amendments. These amendments are listed in Appendix 1.

A marked-up version of the proposed new template water licence is in Appendix 3.

The ERA invites stakeholder feedback on the proposed amendments and the template water licence.

2.1 Provision of water services

[clause 3.3.1(a) of the current template water licence]¹⁰

Section 21 of the Act requires every water licensee to provide the water service(s) authorised by the licence to persons entitled to the service(s) under the Act. The obligation is replicated in clause 3.3.1(a) of the template water licence.¹¹

A person is ‘entitled to the service under the Act’ if the person owns land to which statutory water service charges apply.¹² Statutory water service charges are charges set out in regulations.¹³

Currently, the only regulations that set out water service charges are the *Water Services (Water Corporations Charges) Regulations 2014*. These regulations apply to Busselton Water Corporation, Bunbury Water Corporation (Aqwest) and the Water Corporation.

This means that the only persons entitled to a service under the Act are customers of the three water corporations.

As section 21 of the Act applies only to the three water corporations, the ERA proposes to remove clause 3.3.1(a) from all water licences except for the three water corporations.¹⁴

Proposal 1

Delete clause 3.3.1(a) [now clause 4.3.1(a)] from all water licences other than the licences of the three water corporations.

¹⁰ Clause 4.3.1(a) of the revised template water licence.

¹¹ Id.

¹² Section 73(1) of the Act.

¹³ Section 71(1), definition of ‘statutory water service charges’, of the Act.

¹⁴ Clause 4.3.1(a) of the revised template water licence.

2.2 Contracts

[clauses 5.1, 5.2, 5.3 of the current template water licence]

The template water licence includes three clauses about customer contracts and terms and conditions of services (together ‘contracts’):¹⁵

- Clause 5.1 deals with customer contracts. It provides that a licensee must, if directed by the ERA, submit a draft customer contract for the ERA’s approval.
- Clause 5.2 addresses standard terms and conditions of services. It allows the ERA to specify, in the licence, the terms and conditions under which a licensee must provide a water service.
- Clause 5.3 deals with non-standard terms and conditions of service. It allows licensees and customers to agree to terms and conditions that deviate from the licence or the Water Code. The terms and conditions must be approved by the ERA before they commence, unless they are exempt.¹⁶

The ERA inserted clauses 5.1 and 5.2 in the template water licence in 2013 to provide a regulatory framework for contracts.

Clause 5.3 has been in the template water licence since 2008. It was mainly included to allow licensees and customers to contract out of the service standards prescribed in the licence at the time.¹⁷ In 2013, the scope of the clause was broadened to require ERA approval for terms and conditions that deviated from the *Water Services Code of Conduct (Customer Service Standards)*.

2.2.1 Legislative framework for contracts

The Act does not provide a comprehensive legislative framework for water contracts. It includes some references to contracts,¹⁸ including an obligation for licence applicants to inform the ERA of their contracts, but does not prescribe minimum standards for contracts or set out a role for the ERA in determining the content of contracts.

This is different from the *Electricity Industry Act 2004* and the *Energy Coordination Act 1994* (together the Energy Acts).

¹⁵ The clauses are based upon section 12(1) of the Act, which provides:

A licence may be subject to conditions which, without limiting that, may deal with the following — [...]

- standard terms and conditions for the provision of a water service by the licensee;
- standard customer contracts for the provision of a water service by the licensee, including requiring the licensee to offer to enter into standard customer contracts with specified classes of person;
- the capacity of the licensee to enter into agreements that vary or displace standard terms and conditions of service, standard customer contracts or statutory water service charges;

¹⁶ Clause 5.3.3 of the template water licence lists two exemptions from the requirement to seek ERA approval. Section 2.2.3 and footnote 27 provide more information about the two exemptions.

¹⁷ In 2013, many of the service standards were replaced with ‘design standards’. For example, the current standards for potable water and drainage services require licensees to ‘design, contract, operate and maintain’ their works to a certain standard.

¹⁸ In addition to section 12(1), sections 10(2)(b)(iv), 10(2)(b)(v), 71(1), 73(2)(a) and 75 of the Act include relevant references to contracts.

2.2.1.1 Energy contracts

The Energy Acts include detailed provisions for energy contracts for small use customers.¹⁹ For example, all energy licensees that sell energy to small use customers must have a 'standard form contract' that has been approved by the ERA. Regulations prescribe the matters that must be addressed in a standard form contract.²⁰

Only Synergy and Horizon Power have to offer to supply under their standard form contract.

Regulations also prescribe minimum standards for non-standard contracts. Non-standard contracts do not require the ERA's approval.

This legislative framework for customer contracts guides the ERA when:

- monitoring a licensee's compliance with the conditions of its licence
- reviewing and approving energy contracts.

2.2.1.2 Water contracts

A similar, comprehensive legislative framework does not exist for contracts for the supply of water to customers.

Although applicants for a water licence must 'inform' the ERA of their standard terms and conditions and, if they have any, their standard customer contracts, the Act does not expressly require the ERA to approve standard terms and conditions or standard customer contracts.²¹ The Act also does not prescribe what matters should be addressed in them.

The Act does include a provision similar to the 'offer to supply' obligation that applies to Synergy and Horizon Power. Owners of land to which statutory water service charges apply for the provision of a water services are entitled to the service under the licensee's 'terms and conditions of the provision of the service'. Although section 74 expands generally on what those 'terms and conditions of the provision of the service' are, it does not prescribe minimum terms and conditions or require them to be approved by the ERA.²²

The lack of a comprehensive framework for contracts in the Act led the ERA to include a regulatory framework in the template water licence (clauses 5.1 to 5.3).

¹⁹ A small use customer is a customer who consumes less than 160 Megawatt hours of electricity, or less than 1 Terajoule of gas, per year. Small use customers are typically residential and small business customers.

²⁰ *Electricity Industry (Customer Contracts) Regulations 2005, Energy Coordination (Customer Contracts) Regulations 2004.*

²¹ Sections 10(2)(b)(iv) and (v) of the Act.

²² Section 74(1) of the Act provides that the terms and conditions for the provision of the service to which the owner is entitled are:

- The standard terms and conditions of service (if any) in relation to the service and the licensee, except to the extent to which the standard terms and conditions of service are inconsistent with the terms and conditions referred to in the next paragraph.
- The terms and conditions of the provision of the service in an agreement about the provision of the service (if any), to the extent to which those terms and conditions are binding on the owner.

2.2.2 ERA's role

2.2.2.1 Approving water contracts

The ERA's approval role for water contracts is based on clauses 5.1 and 5.3 of the template water licence. Neither the Act, nor the regulations made under the Act, give the ERA an express statutory authority to approve contracts.²³ The *Economic Regulation Authority Act 2004 (WA)*, which sets out the ERA's functions and powers, also does not give the ERA an express statutory authority to approve contracts.

The Act and regulations also do not provide for a statutory decision-making framework that specifies the basis on which the ERA should approve or not approve contracts.²⁴

In the absence of a statutory approval role, the template water licence cannot provide the ERA with an approval role for water contracts. The ERA therefore proposes to delete clauses 5.1 and 5.3 from the template water licence.

It is a policy matter for Government to decide whether the ERA should have an approval role for contracts and, if so, to specify the basis on which the ERA should approve or not approve contracts.

2.2.2.2 Prescribing terms and conditions of service in the licence

In addition to approving contracts, the template water licence allows the ERA to prescribe standard terms and conditions of service in the licence.

Prescribing terms and conditions in a licence is also a policy matter. In energy, Government has made regulations that prescribe the matters that must be addressed in energy contracts.

The ERA acknowledges that it sets policy in other areas, for example through the setting of customer service standards in the Water Code. However, in these areas the ERA has explicitly been given that role under legislation. This is not the case for water contracts.²⁵

The ERA proposes to delete clause 5.2 from the template water licence.

2.2.3 Possible consequences for licensees and customers

Deleting clauses 5.1 to 5.3 from the water licences is unlikely to materially affect licensees and their customers.

²³ *Water Services Regulations 2013 (WA)*.

²⁴ This is different from the Energy Acts which provide that the ERA must not approve a standard form contract if it considers that the contract:

- (a) will not meet the requirements of the regulations in respect of such contracts; or
- (b) will be inconsistent with —
 - (i) this Act or any other written law; or
 - (ii) any term, condition or provision of the licence concerned.

²⁵ Although section 12(1) allows the ERA to make licence conditions dealing with contracts, the Act does not require the ERA to do so or provide any guidance on the content of those conditions. The Minister may also make a code of practice that deals, amongst other things, with contracts (section 26 of the Act).

2.2.3.1 *Deletion of clauses 5.1 and 5.2*

To date, the ERA has not approved any customer contracts under clause 5.1 or specified any standard terms and conditions under clause 5.2.

Although no activity has occurred under clauses 5.1 and 5.2, the inclusion of both clauses in the template water licence may have encouraged some licensees to ensure their contracts are consistent with the Act. However, it is likely that the role of the Energy and Water Ombudsman (WA) has a similar effect.

The Energy and Water Ombudsman may deal with 'disputes between a customer and a licensee' and 'complaints about a licensee by a customer'.²⁶ Complaints about a contract for water services would fall within the jurisdiction of the ombudsman scheme. If provisions of a licensee's contract are inconsistent with the Act, or regulations or codes made under the Act, the Ombudsman would be expected to uphold the customer's complaint and give a direction to the licensee.

2.2.3.2 *Deletion of clause 5.3*

The ERA has not approved any non-standard terms and conditions since the Act took effect.

However, there are licensees who supply some of their customers under non-standard terms and conditions (agreements). The agreements they have entered into did not require the ERA's approval because they were already in force before the Act took effect.²⁷

Agreements that exclude, modify or restrict the requirements of the Water Code

Removing the ERA's approval role for agreements that 'exclude, modify or restrict the requirements of the Water Code' is unlikely to affect licensees or customers.

The ERA understands that there are currently no such agreements in place. Also, removing the ERA's approval role for these agreements would be consistent with the intent of the Water Code. This is because clause 5(1) of the Water Code:

- Allows licensees and non-residential customers to enter into agreements that vary or displace the requirements of the Water Code in relation to the licensee or customer.
- Does not expressly provide for licensees and residential customers to enter into agreements which vary or displace the Water Code requirements.

The former, 2013 version of the Water Code allowed all customers to contract out of the Water Code. Clause 5(1) of the Water Code, in its current form, was the result of extensive stakeholder consultation during the 2018 review of the Water Code. It aims to protect residential customers who generally have little bargaining power, while providing non-residential customers with the freedom to negotiate terms and conditions different from those prescribed in the Water Code.

²⁶ Section 65(1) of the Act.

²⁷ Clause 5.3 includes a grandfathering provision which provides that if the non-standard term was previously approved by the ERA in another agreement that applies to the same class of customer, or if the non-standard term was in force before 18 November 2013 (when the Act took effect), the term does not require the ERA's approval. The agreements that have been provided to the ERA for consideration since the Act took effect have all been based on existing agreements that were in force before 18 November 2013.

As the Water Code expressly allows licensees and non-residential customers to agree to terms and conditions that differ from the Water Code, the ERA should not, without express statutory authority, have an approval role in these cases. Similarly, as the Water Code does not expressly provide for licensees and residential customers to agree terms and conditions that differ from the Water Code, the licence should not allow the ERA to approve agreements which exclude, modify or restrict the requirements of the Water Code.

It is also likely that, following the amendment to clause 5(1) of the Water Code, clause 5.3 of the template water licence has been beyond power as it allows the ERA to override the protections provided by clause 5(1) to residential customers through the licence.²⁸

Agreements that exclude, modify or restrict the terms and conditions of the licence

Some licensees supply water services under agreements that 'exclude, modify or restrict the terms and conditions of the licence'.

For 2017/18, the Water Corporation reported 12,326 agreements that did not meet the requirements of the licence.²⁹ The agreements related to matters such as water quality, continuity of supply, and pressure and flow standards.

It is likely that the actual number of agreements is lower than reported by licensees as many of the reported agreements are not inconsistent with the licence.

For example, agreements that provide that the licensee will supply water services at a pressure lower than specified in Schedule 2, clause 1.1 are not inconsistent with the licence. This is because the licence does not include an obligation on licensees to supply water services to customers at a prescribed pressure.³⁰ Schedule 2, clause 1.1, which deals with pressure and flow, only requires licensees to "design, construct, operate and maintain their water service works" to provide continuity of pressure and flow in accordance with the standards.³¹

Schedule 2, clause 5 does set standards for the provision of water services to customers. The standards relate to irrigation services. The Water Corporation's licence also includes individual performance standards for customers connected to the Farmlands Water Systems.

The cost of meeting these standards can sometimes be high, which is why clause 5.3 allows licensees and customers to enter into agreements that are inconsistent with the licence.

Removing clause 5.3 will affect licensees as they will no longer be able to contract out of the standards prescribed in clause 5 of Schedule 2. To ensure licensees can continue to provide services outside of these standards, the ERA proposes to remove the performance standards from the template water licence. This is explained in detail in section 2.3.

If the ERA removes the performance standards from the licence, the removal of clause 5.3 is unlikely to materially affect licensees or customers.

²⁸ To the extent it relates to the licensee's obligations under clause 5.3.1(b).

²⁹ Water Corporation, 2018, Services Provided by Agreement report, (online) [accessed 12 April 2019]

³⁰ Prior to the Act taking effect, the template water licence did oblige licensees to provide their potable water and sewerage services at a minimum standard (also see section 2.3). Licensees relied on clause 5.3 to be able to provide water services to their customers without breaching the conditions of their licence.

³¹ Licensees whose water service works do not provide water services at the specified pressure and flow standards will be in breach of Schedule 2, clause 1.1.

2.2.4 Consequential amendments

The ERA also proposes to delete the definitions of ‘amendment date’, ‘customer contract’ and ‘Customer Contract Guidelines’ from clause 7.1.1.³² These terms are only used in clauses 5.1, 5.2 and 5.3.

Proposal 2

Delete clauses 5.1 to 5.3.

Proposal 3

Delete the definitions of ‘amendment date’, ‘customer contract’ and ‘Customer Contract Guidelines’ from clause 7.1.1 [now clause 1.1.1].

2.3 Performance standards

[Schedule 2 of the current template water licence]

Schedule 2 includes performance standards for:

- potable water services (pressure and flow)
- drainage services
- irrigation services (including water quality).

As mentioned earlier, many of the performance standards set out in Schedule 2 are ‘design’ standards. That is, they do not oblige licensees to provide their potable water or drainage services to customers at a minimum standard. Instead, they require the licensee to design, construct, operate and maintain their works to a certain standard.

Before the Act took effect, the template water licence obliged licensees to provide their potable water and sewerage services at a minimum standard. For example, licensees had to ‘maintain pressure, flow and continuity of services’ in accordance with the standards prescribed in the licence.

When the ERA amended the licence to align with the new Act, it initially proposed to delete all the performance standards from Schedule 2. The ERA considered that performance standards for water licensees are a policy matter for Government, not the regulator.^{33 34} As Government had not prescribed any performance standards in the Act or the *Water Services Regulations 2013* the ERA considered the new licences should not include performance standards.³⁵

³² Clause 1.1.1 of the revised template water licence.

³³ For example, in energy, performance standards are prescribed in subsidiary legislation, not the energy licences. The *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* sets voltage fluctuation and harmonic standards for electricity transmitters and distributors.

³⁴ The ERA sets performance standards for Western Power because it approves Western Power’s revenue requirement. The ERA does not regulate revenue or tariffs in the water industry.

³⁵ The only reference in the Act to performance standards is in section 12(1)(a) of the Act. This section provides that a licence may be subject to conditions which deal with the performance standards to be met by the licensee in the provision of a water service authorised by the licence.

At the time, some water licensees requested certain standards remain as they used them to guide their operations and justify their expenditure on water infrastructure. In response, the ERA retained some of the performance standards.³⁶ The pressure and flow standards were amended to refer to water service works, rather than the water service provided.

The ERA now proposes to delete the remaining performance standards from the template water licence.

The main reason for deleting the standards is that the ERA remains of the view that setting performance standards for water licensees is a policy matter for Government.

Another reason is that there are many situations where the standards are not met because the cost of meeting them is considered to be prohibitive. For example, providing water services that meet the prescribed pressure and flow standards to customers in areas covered by the Water Corporation's Farmlands and Rural Water Supply Schemes would be very expensive.

Each time the standard is not met, the licensee is in breach of its licence.

The ERA expects that deleting the performance standards will not significantly affect licensees or customers. Water licensees have designed and operated most of their water service works to achieve the required standard for a long period of time.

Also, licensees and customers already regularly agree to set aside the performance standards. As explained in section 2.2.3.2, licensees who cannot meet the performance standards will enter into an agreement with the customer that excludes or modifies the standards.

2.3.1 *Notifying customers if their pressure and flow falls outside of the standard range*

The main protection afforded by Schedule 2 is not the performance standards themselves, but the requirement that customers are notified if their potable water supply falls outside of the pressure and flow ranges prescribed in the licence. Notification allows customers to take remedial action, for example install a pressure reducing valve or a pump.

The ERA proposes to retain this protection by incorporating the pressure and flow standards currently included in clause 1.1.1 into clause 1.2 of Schedule 2, and moving clause 1.2 to Schedule 3 (Customer provisions). This amendment will ensure that it will no longer be a licence obligation for the licensee to ensure their water service works comply with the pressure and flow standards. However, licensees will continue to have to inform their customers if the pressure and flow supplied falls outside of the ranges described in the licence.

³⁶ All of the sewerage service, and most of the water supply service standards, were removed from the template licence.

Proposal 4

Delete the performance standards from Schedule 2.

Proposal 5

Insert the following new clause in Schedule 3:

1.2 Notification if pressure or flow falls outside of the standard range

1.2.1 The licensee must notify:

- (a) a new customer upon purchase of the affected property as soon as practicable; and
- (b) an existing customer at least annually,

if the pressure and flow of the water supplied to the customer's premises falls outside of the applicable standard pressure and flow range set out in Table 1.

Table 1: Pressure and flow standards

Area	Minimum Static Pressure (metres of water)	Maximum Static Pressure (metres of water)	Minimum Flow (litres per minute)
Water Corporation Perth Metropolitan	15	100	20
Water Corporation Country Urban Areas	13	100	20
All other water licences	15	100	20

- #### 1.2.2
- The notification in clause 1.2 must advise the customer whether the pressure and flow of water supplied to the customer's premises will be lower or higher than the applicable standard pressure and flow range set out in Table 1.

2.4 Hardship policy

[clause 5.4 of the current template water licence]

Clause 5.4 of the template water licence requires licensees to have a financial hardship policy and to comply with any financial hardship policy guidelines produced by the ERA.

During the 2016/17 review of the Water Code, the ERA proposed to move the obligation from the licence to the code. Moving the obligation to the code would ensure that all obligations for financial hardship policies were included in the same place.

The obligation is now included in clause 29 of the Water Code. To reduce duplication, the ERA proposes to remove clause 5.4 from all water licences.³⁷

The ERA will also delete the definition of 'Financial Hardship Policy Guidelines' from clause 7.1.1.³⁸ This term is only used in clause 5.4.

Proposal 6

Delete clause 5.4.

Proposal 7

Delete the definition of 'Financial Hardship Policy Guidelines' from clause 7.1.1 [now clause 1.1.1].

³⁷ ERA, 2018, *Final Decision - 2016/17 Review of the Water Services Code of Conduct (Customer Service Standards) 2013*, paragraph 267 ([online](#)) [accessed 13 March 2019]

³⁸ Clause 1.1.1 of the revised template water licence.

Appendix 1 Proposed administrative amendments

Table 3: Proposed administrative amendments

Clause	Proposed amendment	Reason
- (page 1)	Include on page 1: <i>Operating area</i> <i>The area set out in the plan referred to in clause 2.5.</i>	<ul style="list-style-type: none"> Licence clauses in the template electricity, gas and water licences should, where possible, use consistent language and formatting. The proposed amendment is consistent with the template electricity licence.³⁹
- (page 1)	Signed by [a delegate; / a member; or / the Chair] of the Economic Regulation Authority <Date of amendment>	To clarify who has signed the licence.
1.2 [now 2.2]	<u>The commencement date of this licence is</u> <Original date of grant>.	Supporting text added.
1.3 [now 2.3]	<u>The expiry date of this licence is</u> <Date of expiry>.	Supporting text added.
1.4.1 [now 2.4.1]	This <i>licence</i> commences on the <i>commencement date</i> and continues until the earlier of: (a) the cancellation of the <i>licence</i> <u>for serious default</u> pursuant to clause 2.5 <u>3.5</u> of this <i>licence</i> ; (b) the surrender <u>cancellation</u> of the <i>licence</i> <u>on application of the licensee</u> , pursuant to clause 2.6 <u>3.6</u> of this <i>licence</i> ; or (c) the expiry date.	The amended wording is consistent with the wording in the Act.
2.1 [now 3.1]	Amendment of licence <u>on application of the licensee</u> by the licensee	The amendment clarifies that the licence cannot be amended by the licensee; only the ERA. The wording is also consistent with the wording in the Act.
2.1.1 [now 3.1.1]	The <i>licensee</i> may, at any time , apply to the <i>ERA</i> to amend the <i>licence</i> in accordance with the <i>Act</i> .	This proposed amendment is consistent with the template electricity licence.
2.2.1 [now 3.2.1]	The <i>ERA</i> may, at any time , amend the <i>licence</i> on its own initiative in accordance with the <i>Act</i> and the procedure specified in clause 2.2.2 <u>3.2.2</u> .	The proposed amendment is consistent with the removal of 'at any time' from clause 2.1.1 [now 3.1.1] of the template water licence.

³⁹ The template electricity licence uses the term 'licence area' as this is the term used in the *Electricity Industry Act 2004*. The *Water Services Act 2012* uses the term 'operating area'.

Clause	Proposed amendment	Reason
2.2.2 [now 3.2.2]	Before amending the <i>licence</i> under clause 2.2.1 3.2.1, the <i>ERA</i> must: <ul style="list-style-type: none"> (a) provide the <i>licensee</i> with written <i>notice</i> of the proposed amendments under consideration by the <i>ERA</i>; (b) allow 15 <i>business days</i> for the <i>licensee</i> to make submissions on the proposed amendments; and (c) take into consideration those submissions. 	'Written' is removed from the clause because clause 2.7.1 [now 3.7.1] of the template water licence already provides that all notices, unless otherwise specified, must be in writing.
2.2.5 [now 3.2.5]	For avoidance of doubt, the licensee will not have to pay an associated application fee or licence fee for the purpose of clause 2.2.1.	This clause is not necessary as the <i>Economic Regulation Authority (Licensing Funding) Regulations 2014 (WA)</i> do not require a charge to be paid when the <i>ERA</i> amends a licence on its own initiative.
2.6 [now 3.6]	Cancellation of licence <u>on application of the licensee</u> by the licensee	The amendment clarifies that the licence cannot be cancelled by the licensee; only the <i>ERA</i> . The wording is also consistent with the wording in the Act.
2.6.1 [now 3.6.1]	The <i>licensee</i> may apply to the <i>ERA</i> to request cancellation of the <i>licence</i> at any time by written <i>notice</i> to the <i>ERA</i> .	<ul style="list-style-type: none"> • The removal of 'at any time' is consistent with the removal of 'at any time' from clause 2.2.1 [now 3.2.1] of the template water licence. • 'Written' is removed from the clause because clause 2.7.1 [now 3.7.1] of the template water licence already provides that all notices, unless otherwise specified, must be in writing.
2.7.2(e) [now 3.7.2(e)]	A <i>notice</i> will be regarded as having been sent and received [...] if sent by <u>electronic means email</u> when, according to the sender's electronic record, the <i>notice</i> has been successfully sent to the <u>addressee</u> . addressee's water licensing email address.	The proposed amendment is consistent with the template electricity licence.
2.8.1 [now 3.8.1]	The <i>ERA</i> may direct the <i>licensee</i> to <u>publish, within a specified timeframe,</u> any information within a specified timeframe it considers relevant in connection with the <i>licensee</i> or the performance by the <i>licensee</i> of its obligations under this <i>licence</i> .	The proposed amendment is consistent with the template electricity licence.
2.9.2 [now 3.9.2]	For the avoidance of doubt, this clause does not apply to a decision of the ERA pursuant to the Act, nor does it restrict the licensee's right to have a decision	This clause is not necessary because it is clear from clause 2.9.1 [now 3.9.1] and the definition of 'reviewable decision' that a review only applies to

Clause	Proposed amendment	Reason
	of the ERA reviewed in accordance with the Act.	decisions made by the ERA made under the licence.
3.1.2 [now 4.1.2]	Subject to the provisions of any <i>applicable legislation</i> , the ERA may direct the <i>licensee</i> in writing to do any measure necessary to: (a) correct the breach of any <i>applicable legislation</i> ; or (b) prevent the breach of any <i>applicable legislation</i> occurring again, and specify a time limit by which such action must be taken.	The words “and specify a time limit by which such action must be taken” have been moved to a separate line to clarify that they apply to subclauses (a) and (b).
3.3.1 [now 4.3.1]	The <i>licensee</i> must provide the water service set out in clause 1.1 : (a) <u>provide the water service set out in clause 2.1</u> to persons entitled to the <i>water service</i> under the <i>Act</i> , except to the extent otherwise provided for by the <i>Act</i> ; and (b) if requested, <u>offer to provide the water service set out in clause 2.1</u> to any other person within the <i>operating area</i> on reasonable terms, unless the provision of the <i>water service</i> is not financially viable or is otherwise not practicable.	The proposed amendment is consistent with the wording in the Act.
3.6.1 [now 4.6.1]	The <i>licensee</i> and any <i>related body corporate</i> must maintain accounting records that comply with <u>standards issued by</u> the Australian Accounting Standards Board Standards or equivalent International Accounting Standards.	The proposed amendment is consistent with the template electricity licence.
3.7.1(a) [now 4.7.1(a)]	The <i>licensee</i> must report to the ERA: (a) if the <i>licensee</i> is under external administration as defined by the <i>Corporations Act 2001</i> (Cwth) within <u>two business days of such external administration occurring</u> ; or	The proposed amendment is consistent with the template electricity licence.
3.7.1(b) [now 4.7.1(b)]	The <i>licensee</i> must report to the ERA: (b) if the licensee : (i) <u>the licensee</u> experiences a material change in the licensee's <u>its</u> -corporate, financial or technical circumstances upon which this <i>licence</i> was granted; and (ii) which <u>the change</u> may materially affect the <i>licensee's</i> ability to	<ul style="list-style-type: none"> • Deletion of the word ‘material’ in paragraph (i) is consistent with the template electricity licence. • The words “the licensee” have been moved to paragraph (i), and “which” replaced with “the change”, to improve the readability of the clause.

Clause	Proposed amendment	Reason
	perform its obligations under this licence, within 10 <i>business days</i> of the change occurring; or	
3.7.1 (c)(iv) [now 4.7.1(c)(iv)]	The licensee must report to the ERA [...] if the description of <u>works holding arrangement for the water service works</u> , changes, within 10 <i>business days</i> of the change occurring.	The amendment clarifies that the reporting requirements relate to changes in the holding arrangements for water service works.
3.8.2 [now 4.8.2]	The licensee must comply with any information reporting requirements prescribed by the ERA, including but not limited to the provisions of the Water Compliance Reporting Manual, which apply to the licensee.	The template electricity licence does not include an equivalent clause for the Electricity Compliance Reporting Manual.
3.8.3(a) [now 4.8.2(a)]	Footnote: See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines <u>The Handbook can be found on the ERA website.</u>	For clarification.
4.1.1 [now 5.1.1]	The licensee must provide for, and notify the ERA 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 ERA.	The proposed amendment is consistent with the template electricity licence.
5.1.2 [marked-up licence]	<u>The licensee must notify the ERA of the details of the asset management system within five business days from the later of:</u> (a) <u>the commencement date; or</u> (b) <u>the completion of construction of the licensee's water service works.</u>	<ul style="list-style-type: none"> The proposed insertion of the new clause is consistent with the template electricity licence. When a licence is first amended, the ERA will remove clause 5.1.2 and replace it with 'Not Used' as the ERA would have been provided with notification of the asset management system when the licence was first granted.
4.1.3 [now 5.1.4]	The licensee must, unless otherwise notified in writing by the ERA: (a) — conduct an asset management system review; and (b) provide the ERA with a report on <u>as to the effectiveness of the asset management system review,</u> within 24 months after the commencement date and every 24 months thereafter.	<ul style="list-style-type: none"> Subclause (a) is proposed to be deleted as it is inconsistent with clause 4.1.4 [now 5.1.5] which provides that an asset management system review must be conducted by an independent expert appointed by the ERA. The proposed insertion of the words "as to the effectiveness of" is consistent with the template electricity licence.

Clause	Proposed amendment	Reason
4.1.4 [now 5.1.4]	The <i>asset management system review</i> must be conducted by an independent expert appointed by the ERA in its sole discretion . The ERA will determine the terms of the appointment of the independent expert.	The amendment clarifies that the ERA will consult with the licensee before engaging an independent expert (the auditor). However, the ERA is responsible for the engagement of the auditor. The ERA does not require the licensee's consent to appoint the auditor. Nor does the licensee have the right to amend the proposed terms and conditions for the engagement or appointment of the auditor.
4.1.6 [now 5.1.7]	The licensee must cooperate with the independent expert and comply with the ERA's standard guidelines <i>audit and review guidelines</i> dealing with the <i>asset management system review</i> .	The proposed amendment reflects the current title of the ERA's guidelines for audits and reviews: <i>Audit and Review Guidelines – Water Licences</i> .
4.1.6 [now 5.1.7]	Footnote: The guidelines can be found on the ERA website.	For clarification.
4.3.2 [now 5.3.2]	The <i>operational audit</i> must be conducted by an independent expert appointed by the ERA in its sole discretion . The ERA will determine the terms of the appointment of the independent expert.	See reasoning for 4.1.4 [now 5.1.4] above.
4.3.4 [now 5.3.4]	The licensee must cooperate with the independent expert and comply with the ERA's standard audit guidelines <i>audit and review guidelines</i> dealing with the <i>operational audit</i> .	The proposed amendment reflects the current title of the ERA's guidelines for audits and reviews: <i>Audit and Review Guidelines – Water Licences</i> .
4.3.4 [now 5.3.4]	Footnote: See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines The guidelines can be found on the ERA website.	For clarification.
5.5.1 [now 6.1.1]	The licensee must not supply <i>water services</i> to <i>customers</i> unless the licensee is : (a) is a member of the <i>water services ombudsman scheme</i> ; and (b) is bound by the <i>water services ombudsman scheme</i> ; and (c) bound by, and will be compliant with any decision or direction of the <i>water services ombudsman</i> under the <i>water services ombudsman scheme</i> .	The proposed amendment is consistent with the wording in the Act.

Clause	Proposed amendment	Reason
5.6.1 [now 6.2.1]	<p>If the <i>licensee</i> is appointed the <i>supplier of last resort</i> for a designated area in relation to the provision of a particular water service under the <i>Act</i>, the <i>licensee</i> must:</p> <p>(a) perform the functions of the <i>supplier of last resort</i> for the designated area and the class of <i>water service</i>;</p> <p>(b) comply with the duties imposed in relation to those functions under the <i>Act</i>; and</p> <p>(c) carry out its operations under or for the purposes of the <i>last resort supply plan</i> in accordance with the <i>Act</i>.</p>	<ul style="list-style-type: none"> The proposed amendment clarifies what is meant by the 'class of water service'. This proposed amendment is also consistent with the wording in the <i>Act</i>. The clause has also been re-structured to make it easier to read.
6.1.1 [now 7.1.1]	<p>Where the <i>licensee</i> is, or intends to, provide <i>potable water</i>, the <i>licensee</i> must enter into a <i>MoU</i> as described in this clause 7.1 with the <i>Department of Health</i> as soon as practicable after the <i>commencement date</i> or as otherwise agreed with the <i>Department of Health</i>.</p>	Insertion of more specific wording.
6.1.2(b) [now 7.1.2(b)]	<p>The <i>MoU</i> must:</p> <p>(a) [...]</p> <p>(b) requiring require an audit by the <i>Department of Health</i> on compliance by the <i>licensee</i> with its obligations under the <i>MoU</i> at least once every three years, or other such time as notified by the <i>Department of Health</i>, and the provision of the audit report to the ERA.</p>	Correction of a typographical error.
7.1 [now 1.1]	<p>Clause 7.1 – Definitions</p> <p>[Move clause 7.1 to the start of the licence (clause 1.1)]</p>	The proposed amendment is consistent with the template electricity licence.
7.1.1 [now 1.1.1]	<p>asset management system means the measures that are to be taken by the <i>licensee</i> for the proper maintenance, expansion or reduction provision and operation of the <i>water service works</i>, including measures for the provision and operation of any other water services works necessary for the provision of water services under this licence.</p>	The proposed amendment is consistent with the wording in the <i>Act</i> .
7.1.1 [now 1.1.1]	<p>audit and review guidelines means the guidelines prepared by the ERA setting out the ERA's requirements for the conduct of operational audits and</p>	Proposed definition added to replace the term 'standard audit guidelines' and 'standard guidelines' which are not

Clause	Proposed amendment	Reason
	<u>asset management system reviews, as published by the ERA on its website and as amended from time to time.</u>	defined terms in the current water licence template.
7.1.1 [now 1.1.1]	Code of Conduct means the <i>Water Services Code of Conduct (Customer Service Standards)</i> 2013 2018 as amended or replaced from time to time.	The Water Code was amended in 2018.
7.1.1 [now 1.1.1]	commencement date means the date specified in clause 1.4 2.2.	Correction of a typographical error (the commencement date is specified in subclause 2).
7.1.1 [now 1.1.1]	Department of Water means the Department of Water <u>and Environmental Regulation</u> or its successors in Western Australia.	The Department of Water and Environmental Regulation was established by the Government of Western Australia on 1 July 2017. It resulted from the amalgamation of the Department of Environment Regulation, Department of Water and the Office of the Environmental Protection Authority.
7.1.1 [now 1.1.1]	electronic means means: <u>(a) the internet;</u> <u>(b) email, being:</u> <u>(i) in relation to the ERA, the ERA's email address as notified to the licensee; and</u> <u>(ii) in relation to the licensee, the email address specified in the licence application or other such email address as notified in writing to the ERA; or</u> <u>(iii) any other similar means,</u> <u>but does not include facsimile or telephone.</u>	Amended clause 2.7.2(e) [now 3.7.2(e)] includes the term 'electronic means'. The proposed definition is consistent with the definition of 'electronic means' in the template electricity licence.
7.1.1 [now 1.1.1]	financial hardship policy means a policy referred to in clause 26 29 of the Code of Conduct.	The Water Code was amended in 2018. Clause 26 was renumbered as clause 29.
7.1.1 [now 1.1.1]	National Performance Framework: urban performance reporting indicators and definitions handbook means the handbook initially produced by the National Water Commission of the same name <u>published by the Bureau of Meteorology</u> as amended or replaced from time to time.	The National Water Commission was abolished on 16 June 2015. The Bureau of Meteorology now publishes the handbook.
7.1.1 [now 1.1.1]	residential customer means a customer to which water services are sold or supplied in respect of the place used <u>who uses the place in respect of which a water service is provided</u> solely or primarily as the <i>customer's</i> dwelling.	The definition was originally derived from the definition of 'financial hardship' in the 2013 Water Code: financial hardship means being in an ongoing state of financial disadvantage in which the customer's ability to meet the basic living needs of the customer or

Clause	Proposed amendment	Reason
		<p>a dependant of the customer would be adversely affected if the customer were to pay an unpaid bill for a water service supplied in respect of the place used solely or primarily as the customer's dwelling [our emphasis].</p> <p>The 2018 Water Code contains a stand-alone definition for residential customer:</p> <p>residential customer means a customer who uses the place in respect of which a water service is provided solely or primarily as the customer's dwelling;</p>
<p>7.1.1 [now 1.1.1]</p>	<p>reviewable decision means a decision by the <i>ERA</i> pursuant to:</p> <p>(a) clause 2.8.3 <u>3.8.1</u>; and</p> <p>(b) clause 4.1.6;</p> <p>(c) clause 4.2.2 <u>5.2.2</u>; and</p> <p>(d) clause 4.3.4;</p> <p>of this licence.</p>	<ul style="list-style-type: none"> The reference to clause 2.8.3 [now 3.8.3] has been replaced with a reference to [now] clause 3.8.1. Clause 2.8.3 [now 3.8.3] did not provide for the ERA making a decision. The reference to clause 2.8.3 was therefore incorrect. The ERA does make a decision under clause 2.8.1 [now 3.8.1]. The ERA will include a reference to clause 3.8.1 in the definition of 'reviewable decision'. Clauses 4.1.6 [now 5.1.7] and 4.3.4 [now 5.3.4] do not provide for the ERA making a decision. As there is no decision to be reviewed, the ERA will delete reference to clauses 4.1.6 [now 5.1.7] and 4.3.4 [now 5.3.4] from the definition of 'reviewable decision'. The ERA's <i>2019 Audit and Review Guidelines: Water Licences</i> require the licensee to comply with the guidelines.
<p>7.1.1 [now 1.1.1]</p>	<p>Water Compliance Reporting Manual means the reporting manual issued by the ERA, as amended or replaced from time to time.</p>	<p>Consequential amendment following the removal of clause 3.8.2.⁴⁰</p>
<p>7.1.1 [now 1.1.1]</p>	<p>water licensing email address means:</p> <p>(a) in relation to the ERA, the addressee's authorised ERA email address or other such email address as notified in writing to the licensee; and</p> <p>(b) in relation to the licensee, the email address specified in the licence</p>	<p>Consequential amendment following the proposed changes to clause 2.7.2(e).</p>

⁴⁰ Due to renumbering, this clause is clause 4.8.2 in the marked-up template water licence (Appendix 3).

Clause	Proposed amendment	Reason
	application or other such email address as notified in writing to the ERA.	
7.2 [now 1.2]	Clause 7.2 – Interpretation [Move clause 7.2 to the start of the licence (clause 1.2)]	The proposed amendment is consistent with the template electricity licence.
7.2.1 [now 1.2.1]	A reference in this licence to any <i>applicable legislation</i> includes, unless the context otherwise requires, any statutory modification, amendment, replacement or re-enactment of that <i>applicable legislation</i> .	The proposed amendment is consistent with the template electricity licence.
Schedule 3, clause 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 ERA and must have an approved financial hardship policy in accordance with clause 26 29 of the Code of Conduct prior to any such supply.	The Water Code was amended in 2018. Clause 26 was renumbered as clause 29.

Appendix 2 Template water licence – current



Water Services Licence

<The Company that holds the licence>

<WLX>, Version <#>, <Date of amendment>

Economic Regulation Authority

WESTERN AUSTRALIA

WATER SERVICES ACT 2012

Licensee Name: <The Company that holds the licence>
<ABN/ACN>

Licence Number: <WLX>

Commencement Date: <Original date of grant>

Version Number: <#>

Version Date: <Date of amendment>

Expiry Date: <Date of expiry>

Signed by a delegate; member; or
the Chairman of the Economic Regulation Authority
<Date of amendment>

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1. LICENCE AUTHORISATION

1.1 Activities authorised under this licence

1.1.1 The *licensee* is granted a *licence* for the *operating area(s)* to provide the following *water services* in accordance with the *terms and conditions* of this *licence*:

- (a) *water supply services*:
 - (i) *potable water supply services*
 - (ii) *non-potable water supply services*
- (b) *sewerage services*
- (c) *drainage services*
- (d) *irrigation services*

1.2 Commencement date

1.2.1 <Original date of grant>

1.3 Expiry date

1.3.1 <Date of expiry>

1.4 Term [Section 14 of the Act]

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

- (a) the cancellation of the *licence* pursuant to clause 2.5 of this *licence*;
- (b) the surrender of the *licence* pursuant to clause 2.6 of this *licence*; or
- (c) the *expiry date*.

1.5 Operating area

1.5.1 The *operating area* is set out in plan(s):

OWR-OA-XXX

1.5.2 The operating area plan(s) is provided in Schedule 1.

2. LICENCE ADMINISTRATION

2.1 Amendment of licence by the licensee [Section 18 of the Act]

2.1.1 The *licensee* may, at any time, apply to the *ERA* to amend the *licence* in accordance with the *Act*.

2.2 Amendment of licence by the ERA [Section 17 of the Act]

2.2.1 The *ERA* may, at any time, amend the *licence* on its own initiative in accordance with the *Act* and the procedure specified in clause 2.2.2.

2.2.2 Before amending the *licence* under clause 2.2.1, the *ERA* must:

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

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

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

2.2.5 For avoidance of doubt, the *licensee* will not have to pay an associated application fee or *licence* fee for the purpose of clause 2.2.1.

2.3 Transfer of licence [Section 15 of the Act]

2.3.1 This *licence* may be transferred only in accordance with the *Act*.

2.4 Renewal of licence [Section 13 of the Act]

2.4.1 This *licence* may be renewed only in accordance with the *Act*.

2.5 Cancellation of licence for serious default [Section 34 of the Act]

2.5.1 This *licence* may be cancelled for serious default in accordance with the *Act*.

2.6 Cancellation of licence by the licensee [Section 18 of the Act]

2.6.1 The *licensee* may apply to the *ERA* to request cancellation of the *licence* at any time by written *notice* to the *ERA*.

2.6.2 The *ERA* may cancel the *licence* in accordance with the *Act*.

2.6.3 The *licensee* will not be entitled to a refund of any fees by the *ERA*.

2.7 Notices

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

2.7.2 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*.

2.8 Publishing information

- 2.8.1 The *ERA* 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*.
- 2.8.2 Subject to clause 2.8.3, the *licensee* must *publish* the information referred to in clause 2.8.1.
- 2.8.3 If the *licensee* considers that the information is confidential it must:
- (a) immediately notify the *ERA*; and
 - (b) seek a review of the *ERA*'s decision in accordance with clause 2.9.
- 2.8.4 Once it has reviewed the decision, the *ERA* 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.

2.9 Review of the *ERA*'s decisions

- 2.9.1 The *licensee* may seek a review of a *reviewable decision* by the *ERA* 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 *ERA*) of the decision; and
 - (b) the *ERA* will consider the submission and provide the *licensee* with a written response within 20 *business days*.
- 2.9.2 For the avoidance of doubt, this clause does not apply to a decision of the *ERA* pursuant to the *Act*, nor does it restrict the *licensee*'s right to have a decision of the *ERA* reviewed in accordance with the *Act*.

3. GENERAL LICENCE OBLIGATIONS

3.1 Compliance with applicable legislation [Section 26, 27, 29 and 31 of the Act]

- 3.1.1 Subject to any modifications or exemptions granted pursuant to the *Act* and this *licence*, the *licensee* must comply with any *applicable legislation*.
- 3.1.2 Subject to the provisions of any *applicable legislation*, the *ERA* 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.

3.2 Fees

- 3.2.1 The *licensee* must pay the applicable fees and charges in accordance with the *Economic Regulation Authority (Licensing Funding) Regulations 2014*.

3.3 Provision of water services [Section 21 of the Act]

3.3.1 The licensee must provide the water service set out in clause 1.1:

- (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.

3.4 Provision of water services outside operating area [Section 22 of the Act]

3.4.1 If the *licensee* provides a *water service* outside of the *operating area* specified for that *water service*, the *licensee* must:

- (a) notify the *ERA* as soon as is practicable before commencing to provide the *water service*; and
- (b) apply to amend the *licence* in accordance with clause 2.1 unless otherwise notified by the *ERA*.

3.5 Works holding arrangements [Section 23 of the Act]

3.5.1 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*.

3.6 Accounting records

3.6.1 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.

3.7 Reporting a change in circumstances

3.7.1 The *licensee* must report to the *ERA*:

- (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:
 - (i) the *licensee's* name;
 - (ii) the *licensee's* ABN;
 - (iii) the *licensee's* address;

- (iv) the description of the *water service works*,
changes, within 10 *business days* of the change occurring.

3.8 Provision of information

- 3.8.1 The *licensee* must provide to the *ERA* in the manner and form specified by the *ERA*, specified information on any matter relevant to the operation or enforcement of the *licence*, the operation of the licensing scheme provided for in Part 2 of the Act, or the performance of the *ERA*'s function under that Part.
- 3.8.2 The *licensee* must comply with any information reporting requirements prescribed by the *ERA*, including but not limited to the provisions of the *Water Compliance Reporting Manual*¹, which apply to the *licensee*.
- 3.8.3 Without limiting clause 3.8.1, the *licensee* must provide the *ERA* with the data required for performance reporting purposes that is specified in:
 - (a) the *Water, Sewerage and Irrigation Licence Performance Reporting Handbook*²; and
 - (b) the *National Performance Framework: urban performance reporting indicators and definitions handbook*.

4. AUDITS AND PERFORMANCE REPORTING OBLIGATIONS

4.1 Asset management system [Section 24 of the Act]

- 4.1.1 The *licensee* must provide for, and notify the *ERA* 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 *ERA*.
- 4.1.2 The *licensee* must notify the *ERA* of any material change to the *asset management system* within 10 *business days* of such change.
- 4.1.3 The *licensee* must, unless otherwise notified in writing by the *ERA*:
 - (a) conduct an *asset management system review*; and
 - (b) provide the *ERA* with a report on the *asset management system review*,
within 24 months after the *commencement date* and every 24 months thereafter.
- 4.1.4 The *asset management system review* must be conducted by an independent expert appointed by the *ERA* in its sole discretion. The *ERA* will determine the terms of the appointment of the independent expert.
- 4.1.5 Before appointing an independent expert the *ERA* will:
 - (a) consult with the *licensee* in a manner and form determined by the *ERA*; and

¹ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

² See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

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

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

4.2 Individual performance standards

4.2.1 The *licensee* must comply with the *individual performance standards* as set out in Schedule 2.

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

4.2.3 Before approving any *individual performance standards* under this clause, the *ERA* 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.

4.2.4 Once approved by the *ERA*, the *individual performance standards* are included as additional *terms and conditions* to this *licence* as set out in Schedule 2.

4.3 Operational audit [Section 25 of the Act]

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

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

4.3.3 Before appointing an independent expert the *ERA* will:

- (a) consult with the *licensee* in a manner and form determined by the *ERA*; and
- (b) take into account any relevant matters raised by the *licensee* from that consultation.

4.3.4 The *licensee* must cooperate with the independent expert and comply with the *ERA's* standard audit guidelines dealing with the *operational audit*.³

5. CUSTOMERS

5.1 Customer contract

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

³ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

5.1.2 The *licensee* must comply with any *Customer Contract Guidelines*⁴, which apply to the *licensee*.

5.1.3 The *licensee* may only amend the customer contract by submitting to the *ERA*:

- (a) a proposed amendment to the *customer contract*; or
- (b) a proposed substituted *customer contract*.

5.1.4 The *ERA* 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 *ERA* will amend the *customer contract*,

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

5.1.5 The *ERA* 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.

5.2 Standard terms and conditions of service [Section 71 of the Act]

5.2.1 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.

5.2.2 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.

5.3 Non standard terms and conditions of service

5.3.1 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:

- (a) the terms and conditions of this licence; or
- (b) the requirements of the *Code of Conduct*.

5.3.2 Subject to clause 5.3.3, an agreement referred to in clause 5.3.1:

- (a) must be approved by the *ERA* prior to its commencement; and
- (b) must not be amended without the prior approval of the *ERA*.

⁴ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

5.3.3 The *licensee* does not need the approval of the *ERA* if:

- (a) the terms that exclude, modify or restrict the *terms and conditions* of this *licence* or the requirements of the *Code of Conduct* have previously been approved by the *ERA* 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*.

5.3.4 If a *licensee* enters into an agreement with a *customer* that excludes, modifies or restricts the terms and conditions of this *licence*, or the *Code of Conduct*, 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.

5.4 Hardship policy

5.4.1 Clause 26 of the *Code of Conduct* requires applicable *licensees* to have a *financial hardship policy*. Notwithstanding clause 26(1) of the *Code of Conduct*, 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*.

5.4.2 The *ERA* may produce *Financial Hardship Policy Guidelines* from time to time.

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

5.5 Water Services Ombudsman Scheme [Section 70 of the Act]

5.5.1 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*.

5.6 Supplier of last resort [Section 60 of the Act]

5.6.1 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*.

6. HEALTH

6.1 Memorandum of understanding

- 6.1.1 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* or as otherwise agreed with the *Department of Health*.
- 6.1.2 The *MoU* must:
- (a) specify that the *MoU* is a legally binding document between the *licensee* and *Department of Health*; and
 - (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 *ERA*.
- 6.1.3 The *licensee* must comply with the terms of the *MoU*.
- 6.1.4 The *licensee* must publish, in a form agreed with the *Department of Health*, 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*.
- 6.1.5 The *licensee* must publish the *audit report* on the *licensee's* website within one month of the completion of the *audit*.
- 6.1.6 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*.

7. DEFINITIONS AND INTERPRETATION

7.1 Definitions

- 7.1.1 In this *licence*, the following definitions apply unless the context otherwise requires:

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

amendment date means <Date of amendment>.

applicable legislation includes:

- (a) the *Act*;
- (b) any relevant subsidiary legislation including:
 - (i) regulations made under the *Act*; and
 - (ii) the *Economic Regulation Authority (Licensing Funding) Regulations 2014*; and
- (c) any code in force from time to time made pursuant to 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 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*.

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

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

commencement date means the date specified in clause 1.2.

complaint means an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

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

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 *ERA*, 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 given to that term in section 3 of the *Act*.

ERA means the Economic Regulation Authority.

expiry date means the date specified in clause 1.3.

financial hardship policy means a policy referred to in clause 26 of the Code of Conduct.

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

individual performance standards mean any individual performance standards approved by the *ERA* pursuant to clause 4.2 and specified in Schedule 2 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 pages prior to clause 1, the header and footer of this document, and the amendment record sheet);

- (b) any *Schedules* to this document; and
- (c) any *individual performance standards* approved by the *ERA* pursuant to clause 4.2.

licensee means <The Company that holds the licence>, <ABN/ACN>.

MoU means the memorandum of understanding referred to in clause 6.1 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 clause 1.5.

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

potable water means drinking water in accordance with the Australian Drinking Water Guidelines or as otherwise defined in 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 *ERA* to be published on the *ERA's* website.

related body corporate has the meaning given to that term 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 *ERA* pursuant to:

- (a) clause 2.8.3;
- (b) clause 4.1.6;

- (c) clause 4.2.2; and
- (d) clause 4.3.4;

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 *ERA*, as amended or replaced from time to time.

water licensing email address means:

- (a) in relation to the *ERA*, the addressee's authorised *ERA* 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 *ERA*.

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 clause 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, Sewerage and Irrigation Licence Performance Reporting Handbook means the handbook produced by the *ERA* of the same name as amended or replaced from time to time.

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*.

7.2 Interpretation

- 7.2.1 A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment or re-enactment of that *applicable legislation*.

Schedule 1 – Operating area

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Schedule 2 – Performance standards

The *licensee* must comply with the standards, principles and reporting requirements as set out below.

1. POTABLE WATER

1.1 Potable water system – pressure and flow standards

1.1.1 The *water service works* provided by the *licensee*, for the purpose of *water supply services*, shall be designed, constructed, operated and maintained to provide continuity of pressure and flow for services in accordance with the following standards.

Pressure and flow standards

Area	Minimum Static Pressure (metres of water)	Maximum Static Pressure (metres of water)	Minimum Flow (litres per minute)
Water Corp Perth Metropolitan	15	100	20
Water Corp Country Urban Areas	13	100	20
All other water licences	15	100	20

1.2 Potable water system – pressure and flow exemptions

1.2.1 The licensee must notify:

- (a) new customers upon purchase of the affected property as soon as practicable; and
- (b) existing customers at least annually

that pressure and flow of the water supplied falls outside of the standard pressure and flow range set out in section 1.1 of this Schedule.

1.2.2 The notification set out in section 1.2.2 must include:

- (a) the pressure and flow range; and
- (b) further information about how to manage the exempt pressure and flow.

1.3 Water restrictions

1.3.1 The *licensee* must notify the *ERA* annually of any restrictions applied in accordance with the *Water Services Regulations 2013* to a *potable water* supply, detailing restrictions by scheme, type (severity), duration, start date and number of services affected.

2. NON-POTABLE WATER

Not used.

3. SEWERAGE**3.1 Sewerage service standards**

Not used.

4. DRAINAGE**4.1 Drainage service standards**

4.1.1 The *licensee* must operate, manage, maintain, plan and construct its drains and drainage schemes as set out below, and shall consult in relation to such activities as required by this Schedule.

4.1.2 Urban drainage scheme infrastructure provided by the *licensee* for the purpose of protection against flooding shall be designed, constructed, operated and maintained such that the peak flows of stormwater runoff from rainfall events can be accepted into and will not overflow from the system in accordance with the following standard.

Drainage service standard

	How is it measured	Performance indicator / targets
Drainage – Design of new urban infrastructure.	Desk audit of scheme to test if design of new urban drainage scheme infrastructure protects against flooding from peak flows of stormwater runoff from rainfall events with intensities up to – Residential – 5 year average recurrence interval Commercial – 10 year average recurrence interval.	100% of schemes audited comply with the standard.

4.1.3 In the above table the meaning of the term “average recurrence interval” shall be consistent with the discussion on probability concepts for flood estimation and rainfall intensity – frequency – duration estimation, as contained in Books 1 & 2 respectively of the Institution of Engineers Australia publication, Australian Rainfall and Runoff (1987).

4.1.4 In planning and designing urban infrastructure, the *licensee* must have due regard to the principles, concepts and recommendations of Australian Rainfall and Runoff (1987).

4.1.5 If, prior to 1 January 1996, the *licensee* constructed drainage infrastructure to levels of service standards which were less than those specified in this Schedule then there will be no obligation under this *licence* for the *licensee* to upgrade any infrastructure existing as at 1 January 1996, to meet the above standards where there have been no instances of flooding confirmed to be due to the under capacity of the infrastructure to meet those standards. Where there have been instances of flooding confirmed to be due to under capacity of infrastructure to meet the standards of this Schedule, the *licensee* must upgrade the infrastructure to those standards or must take such action as agreed with affected *customers*.

- 4.1.6 The drainage system will accept drainage water from Local Government works, but will not be required under this *licence* to be upgraded to accept any additional drainage water.
- 4.1.7 Notwithstanding that the *licensee's* urban drainage infrastructure shall itself be designed to the capacity standards listed in this Schedule, in planning and designing such infrastructure the *licensee* must have due regard to the major/minor concept of drainage design discussed in Book 8, 1.5.1 of Australian Rainfall and Runoff (1987). Such due regard will be adequately demonstrated:
- (a) in the case of it undertaking, commissioning or accepting a design for new drainage infrastructure, by the *licensee* ensuring that the local authorities involved have been made aware of the predicted response of the combined major/minor system to major storm events, for the information of those authorities in relation to their responsibilities for the establishment and management of the major (as described in Australian Rainfall and Runoff (1987)) elements of the major/minor system infrastructure; and
 - (b) in the case of it undertaking a capacity review of an existing *licensee* drainage scheme, by the *licensee* causing a broad assessment to be made of the behaviour of the combined major/minor system under major event conditions, and conveying the conclusions of such assessment to the local authorities involved, for the information of those authorities in relation to their responsibilities for management of the major (as described in Australian Rainfall and Runoff (1987)) elements of the major/minor system infrastructure.
- 4.1.8 The *licensee* will ensure all new rural drainage infrastructure complies with the Rural Drainage Manual of Standards 1977. The *licensee* shall endeavour to operate and maintain its rural drainage infrastructure so that the period of inundation to land abutting a drain that forms part of the system shall be a maximum of 72 hours. If the period of inundation should exceed 72 hours the *licensee* must carry out an investigation of the adequacy of those operations and maintenance procedures. An exception is those low lying land areas where the contours make this impossible or where detention basins have been constructed for the retention of water for longer periods. Low lying areas include those areas within lots which abut the drain, which would normally not readily drain to the drain. However, land that would normally drain to the drain, but where this is prevented by high flow levels in the drain, will be subject to the maximum 72 hour inundation period. This inundation period shall apply provided multiple storm events do not increase flow levels in the drains above the rural drainage infrastructure discharge points. The drainage system serves the general drainage requirements of rural properties in the Drainage Services Control Areas and there will be no obligation under this *licence* for the *licensee* to extend the service to other properties, "or serve urban drainage development within the rural areas."
- 4.1.9 The following flood protection works will be operated and maintained to cater for the peak flows of stormwater runoff from individual rainfall events set out below.

Flood protection works	Location	Level of protection (average recurrence interval)
Preston River levees	Bunbury – Leschenault Inlet to Picton Bridge	1 in 100 year
Vasse River Diversion	Busselton	1 in 20 year

5. IRRIGATION

5.1 Irrigation service standards

- 5.1.1 The *licensee* must supply water that is suitable for irrigation purposes.
- 5.1.2 The *licensee* must provide at least 5 *business days*' notice to a *customer* of any planned service interruption.
- 5.1.3 The licensee must comply with the standards and principles as set out below.

Irrigation service standards

Irrigation Water Quality	Percentage of customers given 5 days notice of a planned interruption
<1,200mg/L TDS	>90

Schedule 3 – Customer provisions

1. ADDITIONAL CUSTOMER PROVISIONS

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 *ERA* 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.

Amendment record sheet

Version No. ⁵ .	Version Date	Description of Amendment
1	<Date of amendment>	Water services licence granted for the following service(s): <ul style="list-style-type: none">• ...

⁵ Amendment record sheet added to licence August 2008.

Appendix 3 Template water licence – marked up



Water Services Licence

<The Company that holds the licence>

<WLX><WLX>, Version <#>, <Date of amendment>

Economic Regulation Authority

WESTERN AUSTRALIA

WATER SERVICES ACT 2012

Licensee name: <The Company that holds the licence>
<ABN/ACN>

Operating area: The area set out in the plan referred to in clause 2.5.

Licence number: <WLX>

Commencement date: <Original date of grant>

Version number: <#>

Version date: <Date of amendment>

Expiry date: <Date of expiry>

Signed by [a delegate; / a member / ~~or~~
the Chairman] of the Economic Regulation Authority

<Date of amendment>

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In this *licence*, the following definitions apply unless the context otherwise requires:

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

~~**amendment date** means <Date of amendment>.~~

applicable legislation includes:

- (a) the *Act*;
- (b) any relevant subsidiary legislation including:
 - (i) regulations made under the *Act*; and
 - (ii) the *Economic Regulation Authority (Licensing Funding) Regulations 2014*; and
- (c) any code in force from time to time made pursuant to the *Act*.

asset management system means the measures that are to be taken by the *licensee* for the proper maintenance, ~~expansion or reduction~~ provision and operation of the *water service works*, including measures for the provision and operation of any other *water services works* necessary for the provision of *water services* under this *licence*.

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

audit and review guidelines means the guidelines prepared by the *ERA* setting out the *ERA's* requirements for the conduct of *operational audits* and *asset management system reviews*, as published by the *ERA* on its website and as amended from time to time.

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*.

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

Code of Conduct means the *Water Services Code of Conduct (Customer Service Standards) 2018* ~~2013~~ as amended or replaced from time to time.

commencement date means the date specified in clause ~~4.1~~ 2.2.

complaint means an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

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

~~**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*.~~

Commented [ERA1]: Definitions and interpretation moved from clause 7 to clause 1.

~~**Customer Contract Guidelines** means the guidelines relating to the content of the licensee's customer contract issued by the ERA, 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 and Environmental Regulation means the Department of Water and Environmental Regulation or its successors in Western Australia.

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

electronic means means:

- (a) the internet;
- (b) email, being:
 - (i) in relation to the ERA, the ERA's email address as notified to the licensee; and
 - (ii) in relation to the licensee, the email address specified in the licence application or other such email address as notified in writing to the ERA; or
 - (iii) any other similar means,

but does not include facsimile or telephone.

ERA means the Economic Regulation Authority.

expiry date means the date specified in clause 4.3 2.3.

financial hardship policy means a policy referred to in clause 26 29 of the Code of Conduct.

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

individual performance standards mean any individual performance standards approved by the ERA pursuant to clause 4.2 5.2 and specified in Schedule 2 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 pages prior to clause 1, the header and footer of this document, and the amendment record sheet);
- (b) any Schedules to this document; and
- (c) any individual performance standards approved by the ERA pursuant to clause 4.2 5.2.

licensee means <The Company that holds the licence>, <ABN/ACN>.

MoU means the memorandum of understanding referred to in clause ~~6.4~~ 7.1 as amended or replaced from time to time.

National Performance Framework: urban performance reporting indicators and definitions handbook means the handbook published by the Bureau of Meteorology, ~~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 clause ~~4.5~~ 2.5.

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

potable water means drinking water in accordance with the Australian Drinking Water Guidelines or as otherwise defined in 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 *ERA* to be published on the *ERA's* website.

related body corporate has the meaning given to that term 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~~ who uses the place in respect of which a *water service* is provided solely or primarily as the *customer's* dwelling.

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

- (a) clause ~~2.8.3~~ 3.8.1; and
- (b) ~~clause 4.1.6;~~
- (c) clause ~~4.2.2~~ 5.2.2; and
- (d) ~~clause 5.3.4;~~

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 ERA, as amended or replaced from time to time.~~

~~**water licensing email address** means:~~

~~(a) — in relation to the ERA, the addressee's authorised ERA 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 ERA.~~

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 clause 4.2.

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, Sewerage and Irrigation Licence Performance Reporting Handbook means the handbook produced by the ERA of the same name, as amended or replaced from time to time.

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*.

1.2 Interpretation

- 1.2.1 A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment, replacement or re-enactment of that *applicable legislation*.

2. LICENCE AUTHORISATION

2.1 Activities authorised under this licence

2.1.1 The *licensee* is granted a *licence* for the *operating area(s)* to provide the following *water services* in accordance with the *terms and conditions* of this *licence*:

- (a) *water supply services*:
 - (i) *potable water supply services*
 - (ii) *non-potable water supply services*
- (b) *sewerage services*
- (c) *drainage services*
- (d) *irrigation services*

2.2 Commencement date

2.2.1 The *commencement date of this licence* is <Original date of grant>.

2.3 Expiry date

2.3.1 The *expiry date of this licence* is <Date of expiry>.

2.4 Term [Section 14 of the Act]

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

- (a) the cancellation of the *licence for serious default* pursuant to clause ~~2-5~~ 3.5 of this *licence*;
- (b) the ~~surrender~~ cancellation of the *licence on application of the licensee*, pursuant to clause ~~2-6~~ 3.6 of this *licence*; or
- (c) the *expiry date*.

2.5 Operating area

2.5.1 The *operating area* is set out in plan(s):

OWR-OA-XXX

2.5.2 The *operating area* plan(s) is provided in Schedule 1.

3. LICENCE ADMINISTRATION

3.1 Amendment of licence on application of the licensee ~~by the licensee~~ [Section 18 of the Act]

3.1.1 The *licensee* may, ~~at any time~~, apply to the *ERA* to amend the *licence* in accordance with the *Act*.

3.2 Amendment of licence by the ERA [Section 17 of the Act]

3.2.1 The ERA may, ~~at any time,~~ amend the *licence* on its own initiative in accordance with the Act and the procedure specified in clause ~~2.2.2~~ 3.2.2.

3.2.2 Before amending the *licence* under clause ~~2.2.4~~ 3.2.1, the ERA must:

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

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

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

~~3.2.5 For avoidance of doubt, the licensee will not have to pay an associated application fee or licence fee for the purpose of clause 3.2.1.~~

3.3 Transfer of licence [Section 15 of the Act]

3.3.1 This *licence* may be transferred only in accordance with the Act.

3.4 Renewal of licence [Section 13 of the Act]

3.4.1 This *licence* may be renewed only in accordance with the Act.

3.5 Cancellation of licence for serious default [Section 34 of the Act]

3.5.1 This *licence* may be cancelled for serious default in accordance with the Act.

3.6 Cancellation of licence on application of the licensee ~~by the licensee~~ [Section 18 of the Act]

3.6.1 The *licensee* may apply to the ERA to request cancellation of the *licence* ~~at any time~~ by ~~written~~ notice to the ERA.

3.6.2 The ERA may cancel the *licence* in accordance with the Act.

3.6.3 The *licensee* will not be entitled to a refund of any fees by the ERA.

3.7 Notices

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

3.7.2 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 *electronic means email* when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee. ~~addressee's water licensing email address.~~

3.8 Publishing information

- 3.8.1 The *ERA* may direct the *licensee* to *publish*, within a specified timeframe, 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*.
- 3.8.2 Subject to clause ~~2.8.3~~ 3.8.3, the *licensee* must *publish* the information referred to in clause ~~2.8.4~~ 3.8.1.
- 3.8.3 If the *licensee* considers that the information is confidential it must:
 - (a) immediately notify the *ERA*; and
 - (b) seek a review of the *ERA*'s decision in accordance with clause 3.9.
- 3.8.4 Once it has reviewed the decision, the *ERA* 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.

3.9 Review of the *ERA*'s decisions

- 3.9.1 The *licensee* may seek a review of a *reviewable decision* by the *ERA* 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 *ERA*) of the decision; and
 - (b) the *ERA* will consider the submission and provide the *licensee* with a written response within 20 *business days*.

~~3.9.2 For the avoidance of doubt, this clause does not apply to a decision of the *ERA* pursuant to the Act, nor does it restrict the *licensee*'s right to have a decision of the *ERA* reviewed in accordance with the Act.~~

4. GENERAL LICENCE OBLIGATIONS

4.1 Compliance with applicable legislation [Sections 26, 27, 29 and 31 of the Act]

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

4.1.2 Subject to the provisions of any *applicable legislation*, the ERA 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.~~

and specify a time limit by which such action must be taken.

4.2 Fees

4.2.1 The licensee must pay the applicable fees and charges in accordance with the *Economic Regulation Authority (Licensing Funding) Regulations 2014*.

4.3 Provision of water services [Section 21 of the Act]

4.3.1 The licensee must ~~provide the water service set out in clause 2.1:~~

- (a) provide the *water service set out in clause 2.1* to persons entitled to the *water service* under the Act, except to the extent otherwise provided for by the Act; and
- (b) if requested, offer to provide the *water service set out in clause 2.1* 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.

4.4 Provision of water services outside operating area [Section 22 of the Act]

4.4.1 If the licensee provides a *water service* outside of the *operating area* specified for that *water service*, the licensee must:

- (a) notify the ERA as soon as is practicable before commencing to provide the *water service*; and
- (b) apply to amend the *licence* in accordance with clause ~~2.4~~ 3.1 unless otherwise notified by the ERA.

4.5 Works holding arrangements [Section 23 of the Act]

4.5.1 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*.

4.6 Accounting records

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

4.7 Reporting a change in circumstances

4.7.1 The licensee must report to the ERA:

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

- (b) if ~~the licensee~~:
- (i) ~~the licensee~~ experiences a **material** change in ~~the licensee's~~ its corporate, financial or technical circumstances upon which this *licence* was granted; and
 - (ii) ~~which the change~~ 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:
- (i) the *licensee's* name;
 - (ii) the *licensee's* ABN;
 - (iii) the *licensee's* address;
 - (iv) the ~~description of works holding arrangement for~~ the *water service works*, changes, within 10 *business days* of the change occurring.

4.8 Provision of information

4.8.1 The *licensee* must provide to the *ERA* in the manner and form specified by the *ERA*, specified information on any matter relevant to the operation or enforcement of the *licence*, the operation of the licensing scheme provided for in Part 2 of the *Act*, or the performance of the *ERA's* function under that Part.

~~4.8.2 The licensee must comply with any information reporting requirements prescribed by the ERA, including but not limited to the provisions of the Water Compliance Reporting Manual¹, which apply to the licensee.~~

4.8.2 Without limiting clause ~~3.8.4~~ 4.8.1, the *licensee* must provide the *ERA* with the data required for performance reporting purposes that is specified in:

- (a) the *Water, Sewerage and Irrigation Licence Performance Reporting Handbook*²; and
- (b) the *National Performance Framework: urban performance reporting indicators and definitions handbook*.

5. AUDITS AND PERFORMANCE REPORTING OBLIGATIONS

5.1 Asset management system [Section 24 of the Act]

5.1.1 The *licensee* must provide for, ~~and notify the ERA 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 ERA.~~

¹ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

² The Handbook can be found on the ERA website. See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

- 5.1.2 The *licensee* must notify the *ERA* of the details of the *asset management system* within five *business days* from the later of:
- (a) the *commencement date*; or
 - (b) the completion of construction of the *licensee's water service works*.
- 5.1.3 The *licensee* must notify the *ERA* of any material change to the *asset management system* within 10 *business days* of such change.
- 5.1.4 The *licensee* must, unless otherwise notified in writing by the *ERA*: ~~conduct an *asset management system review*; and~~ provide the *ERA* with a report ~~on~~ as to the effectiveness of the *asset management system review*, within 24 months after the *commencement date* and every 24 months thereafter.
- 5.1.5 The *asset management system review* must be conducted by an independent expert appointed by the *ERA*. ~~in its sole discretion~~. The *ERA* will determine the terms of the appointment of the independent expert.
- 5.1.6 Before appointing an independent expert the *ERA* will:
- (a) consult with the *licensee* in a manner and form determined by the *ERA*; and
 - (b) take into account any relevant matters raised by the *licensee* from that consultation.
- 5.1.7 The *licensee* must cooperate with the independent expert and comply with the *ERA's audit and review guidelines* ~~standard guidelines~~ dealing with the *asset management system review*.³

5.2 Individual performance standards

- 5.2.1 The *licensee* must comply with the *individual performance standards* as set out in Schedule 2.
- 5.2.2 The *ERA* may prescribe *individual performance standards* in relation to the *licensee* of its obligations under this *licence* or the *applicable legislation*.
- 5.2.3 Before approving any *individual performance standards* under this clause, the *ERA* 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.
- 5.2.4 Once approved by the *ERA*, the *individual performance standards* are included as additional *terms and conditions* to this *licence* as set out in Schedule 2.

5.3 Operational audit [Section 25 of the Act]

³ The guidelines can be found on the [ERA website](#).

- 5.3.1 The *licensee* must, unless otherwise notified in writing by the *ERA*, provide the *ERA* with an *operational audit* within 24 months after the *commencement date*, and every 24 months thereafter.
- 5.3.2 The *operational audit* must be conducted by an independent expert appointed by the *ERA* ~~in its sole discretion~~. The *ERA* will determine the terms of the appointment of the independent expert.
- 5.3.3 Before appointing an independent expert the *ERA* will:
- (a) consult with the *licensee* in a manner and form determined by the *ERA*; and
 - (b) take into account any relevant matters raised by the *licensee* from that consultation.
- 5.3.4 The *licensee* must cooperate with the independent expert and comply with the *ERA*'s *audit and review guidelines* ~~standard audit guidelines~~ dealing with the *operational audit*.⁴

~~6. CUSTOMERS~~

~~6.1 Customer contract~~

- ~~6.1.1 The licensee must, if directed by the ERA, submit a draft customer contract for approval by the ERA.~~
- ~~6.1.2 The licensee must comply with any Customer Contract Guidelines⁵, which apply to the licensee.~~
- ~~6.1.3 The licensee may only amend the customer contract by submitting to the ERA:~~
- ~~(a) a proposed amendment to the customer contract; or~~
 - ~~(b) a proposed substituted customer contract.~~
- ~~6.1.4 The ERA 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 ERA will amend the customer contract, and notify the licensee of its decision within 10 business days of making the decision.~~
- ~~6.1.5 The ERA 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.~~

⁴ The guidelines can be found on the ERA website. See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

⁵ See www.erawa.com.au -> Water Licensing -> Regulatory Guidelines.

6.2 — Standard terms and conditions of service
[Section 71 of the Act]

6.2.1 — 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.~~

~~6.2.2 — 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.~~

6.3 — Non standard terms and conditions of service

~~6.3.1 — 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:~~

- ~~(a) the terms and conditions of this licence; or~~
- ~~(b) the requirements of the Code of Conduct.~~

~~6.3.2 — Subject to clause 0, an agreement referred to in clause 0:~~

- ~~(a) must be approved by the ERA prior to its commencement; and~~
- ~~(b) must not be amended without the prior approval of the ERA.~~

~~6.3.3 — The licensee does not need the approval of the ERA if:~~

- ~~(a) the terms that exclude, modify or restrict the terms and conditions of this licence or the requirements of the Code of Conduct have previously been approved by the ERA 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.~~

~~6.3.4 — If a licensee enters into an agreement with a customer that excludes, modifies or restricts the terms and conditions of this licence, or the Code of Conduct, 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.~~

6.4 — Hardship policy

~~6.4.1 — Clause 26 of the Code of Conduct requires applicable licensees to have a financial hardship policy. Notwithstanding clause 26(1) of the Code of Conduct, 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.~~

~~6.4.2 The ERA may produce Financial Hardship Policy Guidelines from time to time.~~

~~6.4.3 The licensee must comply with any Financial Hardship Policy Guidelines, which apply to the licensee.~~

6.1 Water Services Ombudsman Scheme [Section 70 of the Act]

6.1.1 The licensee must not supply water services to customers unless the licensee is:

- (a) is a member of the water services ombudsman scheme; ~~and~~
- (b) is bound by the water services ombudsman scheme; and
- (c) ~~bound by, and~~ will be compliant with, any decision or direction of the water services ombudsman under the water services ombudsman scheme.

6.2 Supplier of last resort [Section 60 of the Act]

6.2.1 If the licensee is appointed the supplier of last resort for a designated area in relation to the provision of a particular water service under the Act, the licensee must:

- (a) perform the functions of the supplier of last resort for the designated area and the class of water service;
- (b) comply with the duties imposed in relation to those functions under the Act; and
- (c) carry out its operations under or for the purposes of the last resort supply plan in accordance with the Act.

7. HEALTH

7.1 Memorandum of understanding

7.1.1 Where the licensee is, or intends to, provide potable water, the licensee must enter into a MoU as described in this clause 7.1 with the Department of Health as soon as practicable after the commencement date or as otherwise agreed with the Department of Health.

7.1.2 The MoU must:

- (a) specify that the MoU is a legally binding document between the licensee and Department of Health; and
- (b) ~~requiring~~ require 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 ERA.

7.1.3 The licensee must comply with the terms of the MoU.

- 7.1.4 The *licensee* must *publish*, in a form agreed with the *Department of Health*, 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*.
- 7.1.5 The *licensee* must *publish* the *audit report* on the *licensee's* website within one month of the completion of the audit.
- 7.1.6 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*.

8. — DEFINITIONS AND INTERPRETATION

8.1 — Definitions

8.1.1 In this *licence*, the following definitions apply unless the context otherwise requires:

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

~~**amendment date** means <Date of amendment>.~~

~~**applicable legislation** includes:~~

~~(a) — the *Act*;~~

~~(b) — any relevant subsidiary legislation including:~~

~~(i) — regulations made under the *Act*, and~~

~~(ii) — the *Economic Regulation Authority (Licensing Funding) Regulations 2014*; and~~

~~(c) — any code in force from time to time made pursuant to 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 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*.~~

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

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

~~**commencement date** means the date specified in clause 2.2.~~

~~**complaint** means an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.~~

~~**customer** has the meaning given to that term in section 3 of the *Act*.~~

~~**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 ERA, 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 given to that term in section 3 of the Act.

~~**ERA**~~ means the Economic Regulation Authority.

~~**expiry date**~~ means the date specified in clause 2.3.

~~**financial hardship policy**~~ means a policy referred to in clause 26 of the Code of Conduct.

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

~~**individual performance standards**~~ mean any individual performance standards approved by the ERA pursuant to clause 5.2 and specified in Schedule 2 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 pages prior to clause 1, the header and footer of this document, and the amendment record sheet);
- (b) any Schedules to this document; and
- (c) any individual performance standards approved by the ERA pursuant to clause 5.2.

~~**licensee**~~ means <The Company that holds the licence>, **Error! Reference source not found.**

~~**MoU**~~ means the memorandum of understanding referred to in clause 7.1 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 clause 2.5.~~

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

~~**potable water** means drinking water in accordance with the Australian Drinking Water Guidelines or as otherwise defined in 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 ERA to be published on the ERA's website.~~

~~**related body corporate** has the meaning given to that term 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 ERA pursuant to:~~

~~(a) clause 3.8.3;~~

~~(b) clause 5.1.7;~~

~~(c) clause 5.2.2; and~~

~~(d) clause 5.3.4;~~

~~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 ERA, as amended or replaced from time to time.~~

~~**water licensing email address** means:~~

- ~~(a) — in relation to the *ERA*, the addressee's authorised *ERA* 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 *ERA*.~~

~~**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 clause 2.~~

~~**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, Sewerage and Irrigation Licence Performance Reporting Handbook** means the handbook produced by the *ERA* of the same name as amended or replaced from time to time.~~

~~**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*.~~

8.2 — Interpretation

~~8.2.1 — A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment or re-enactment of that *applicable legislation*.~~

Schedule 1 – Operating area

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Schedule 2 – Performance standards

Not Used

~~The licensee must comply with the standards, principles and reporting requirements as set out below.~~

~~1. POTABLE WATER~~

~~1.1 Potable water system – pressure and flow standards~~

~~1.1.1 The water service works provided by the licensee, for the purpose of water supply services, shall be designed, constructed, operated and maintained to provide continuity of pressure and flow for services in accordance with the following standards.~~

~~Pressure and flow standards~~

Area	Minimum Static Pressure (metres of water)	Maximum Static Pressure (metres of water)	Minimum Flow (litres per minute)
Water Corp Perth Metropolitan	15	100	20
Water Corp Country Urban Areas	13	100	20
All other water licences	15	100	20

~~1.2 Potable water system – pressure and flow exemptions~~

~~1.2.1 The licensee must notify:~~

- ~~(a) new customers upon purchase of the affected property as soon as practicable; and~~
- ~~(b) existing customers at least annually~~

~~that pressure and flow of the water supplied falls outside of the standard pressure and flow range set out in section 1.1 of this Schedule.~~

~~1.2.1 The notification set out in section 1.2.2 must include:~~

- ~~(a) the pressure and flow range; and~~
- ~~(b) further information about how to manage the exempt pressure and flow.~~

~~1.3 Water restrictions~~

~~1.3.1 The licensee must notify the ERA annually of any restrictions applied in accordance with the Water Services Regulations 2013 to a potable water supply, detailing restrictions by scheme, type (severity), duration, start date and number of services affected.~~

2. ~~NON-POTABLE WATER~~

~~Not used.~~

3. ~~SEWERAGE~~

3.1 ~~Sewerage service standards~~

~~Not used.~~

4. ~~DRAINAGE~~

4.1 ~~Drainage service standards~~

~~4.1.1 The licensee must operate, manage, maintain, plan and construct its drains and drainage schemes as set out below, and shall consult in relation to such activities as required by this Schedule.~~

~~4.1.2 Urban drainage scheme infrastructure provided by the licensee for the purpose of protection against flooding shall be designed, constructed, operated and maintained such that the peak flows of stormwater runoff from rainfall events can be accepted into and will not overflow from the system in accordance with the following standard.~~

Drainage service standard

	How is it measured	Performance indicator / targets
Drainage—Design of new urban infrastructure.	Desk audit of scheme to test if design of new urban drainage scheme infrastructure protects against flooding from peak flows of stormwater runoff from rainfall events with intensities up to – Residential—5 year average recurrence interval Commercial—10 year average recurrence interval.	100% of schemes audited comply with the standard.

~~4.1.3 In the above table the meaning of the term “average recurrence interval” shall be consistent with the discussion on probability concepts for flood estimation and rainfall intensity—frequency—duration estimation, as contained in Books 1 & 2 respectively of the Institution of Engineers Australia publication, Australian Rainfall and Runoff (1987).~~

~~4.1.4 In planning and designing urban infrastructure, the licensee must have due regard to the principles, concepts and recommendations of Australian Rainfall and Runoff (1987).~~

~~4.1.5 If, prior to 1 January 1996, the licensee constructed drainage infrastructure to levels of service standards which were less than those specified in this Schedule then there will be no obligation under this licence for the licensee to upgrade any infrastructure existing as at 1 January 1996, to meet the above standards where there have been no instances of flooding confirmed to be due to the under capacity of the infrastructure to meet those standards. Where there have been instances of flooding confirmed to be due to under capacity of infrastructure to meet the standards of this Schedule, the licensee must upgrade the infrastructure to those standards or must take such action as agreed with affected customers.~~

~~4.1.6 The drainage system will accept drainage water from Local Government works, but will not be required under this licence to be upgraded to accept any additional drainage water.~~

~~4.1.7 Notwithstanding that the licensee's urban drainage infrastructure shall itself be designed to the capacity standards listed in this Schedule, in planning and designing such infrastructure the licensee must have due regard to the major/minor concept of drainage design discussed in Book 8, 1.5.1 of Australian Rainfall and Runoff (1987). Such due regard will be adequately demonstrated:~~

~~(a) in the case of it undertaking, commissioning or accepting a design for new drainage infrastructure, by the licensee ensuring that the local authorities involved have been made aware of the predicted response of the combined major/minor system to major storm events, for the information of those authorities in relation to their responsibilities for the establishment and management of the major (as described in Australian Rainfall and Runoff (1987)) elements of the major/minor system infrastructure; and~~

~~(b) in the case of it undertaking a capacity review of an existing licensee drainage scheme, by the licensee causing a broad assessment to be made of the behaviour of the combined major/minor system under major event conditions, and conveying the conclusions of such assessment to the local authorities involved, for the information of those authorities in relation to their responsibilities for management of the major (as described in Australian Rainfall and Runoff (1987)) elements of the major/minor system infrastructure.~~

~~4.1.8 The licensee will ensure all new rural drainage infrastructure complies with the Rural Drainage Manual of Standards 1977. The licensee shall endeavour to operate and maintain its rural drainage infrastructure so that the period of inundation to land abutting a drain that forms part of the system shall be a maximum of 72 hours. If the period of inundation should exceed 72 hours the licensee must carry out an investigation of the adequacy of those operations and maintenance procedures. An exception is those low lying land areas where the contours make this impossible or where detention basins have been constructed for the retention of water for longer periods. Low lying areas include those areas within lots which abut the drain, which would normally not readily drain to the drain. However, land that would normally drain to the drain, but where this is prevented by high flow levels in the drain, will be subject to the maximum 72-hour inundation period. This inundation period shall apply provided multiple storm events do not increase flow levels in the drains above the rural drainage infrastructure discharge points. The drainage system serves the general drainage requirements of rural properties in the Drainage Services Control Areas and there will be no obligation under this licence for the licensee to extend the service to other properties, "or serve urban drainage development within the rural areas."~~

~~4.1.9 The following flood protection works will be operated and maintained to cater for the peak flows of stormwater runoff from individual rainfall events set out below:~~

Flood protection works	Location	Level of protection (average recurrence interval)
Preston River levees	Bunbury — Leschenault Inlet to Pictou Bridge	1 in 100-year
Vasse River Diversion	Busselton	1 in 20-year

5. IRRIGATION

5.1 Irrigation service standards

- 5.1.1 The licensee must supply water that is suitable for irrigation purposes.
- 5.1.2 The licensee must provide at least 5 business days' notice to a customer of any planned service interruption.
- 5.1.3 The licensee must comply with the standards and principles as set out below.

Irrigation service standards

Irrigation Water Quality	Percentage of customers given 5 days notice of a planned interruption
<1,200mg/L TDS	>90

Schedule 3 – Customer provisions

1. ADDITIONAL CUSTOMER PROVISIONS

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 *ERA* and must have an approved *financial hardship policy* in accordance with clause 29 26 of the *Code of Conduct* prior to any such supply.

1.1.2 For the purposes of clause 4.4 2.1, 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.

1.2 Notification if pressure or flow falls outside of the standard range Potable water system – pressure and flow exemptions

1.2.1 The *licensee* must notify:

- (a) new *customers* upon purchase of the affected property as soon as practicable; and
- (b) existing *customers* at least annually,

if the ~~that~~ pressure and flow of the water supplied to the *customer's premises* falls outside of the applicable standard pressure and flow range set out in Table 1 ~~section 1.1 of this Schedule~~.

Table 1: Pressure and flow standards

Area	Minimum Static Pressure (metres of water)	Maximum Static Pressure (metres of water)	Minimum Flow (litres per minute)
Water Corp Perth Metropolitan	15	100	20
Water Corp Country Urban Areas	13	100	20
All other water licences	15	100	20

1.2.2 The notification set out in clause 1.2 ~~section 1.2.2~~ must advise the *customer* whether the pressure and flow of water supplied to the *customer's premises* will be lower or higher than the applicable standard pressure and flow range set out in Table 1. ~~include:~~

- (a) ~~the pressure and flow range; and~~
- (b) ~~further information about how to manage the exempt pressure and flow.~~

Commented [ERA2]: Moved from Schedule 2 to Schedule 3.

Amendment record sheet

Version No.	Version Date	Description of Amendment
1	<Date of amendment>	Water services licence granted for the following service(s): <ul style="list-style-type: none">• ...