

B. REGULATORY FRAMEWORK

This appendix explains the legislative and regulatory requirements surrounding a Price Determination Investigation, and provides information about other industry regulators.

Economic regulation of the Tasmanian water and sewerage industry, and the conduct of the price determination investigation in particular, are governed by the:

- Water and Sewerage Corporation Act 2012;
- Water and Sewerage Industry Act 2008;
- Water and Sewerage Industry (Pricing and Related Matters) Regulations 2021 (Pricing Regulations);
- Water and Sewerage Industry (Customer Service Standards) Regulations 2019 (Customer Service Regulations);
- Customer Service Code (Code); and
- Price and Service Plan Guideline (PSP Guideline).¹⁴¹

Water and Sewerage Corporation Act

The Water and Sewerage Corporation Act established TasWater by transferring the liabilities, employees and water and sewerage assets from the previous regulated entities to TasWater. The Act also ensured the continued application of the Regulator's 2012 Price Determinations and Price and Service Plans to TasWater until the end of the first regulatory period on 30 June 2015.

Water and Sewerage Industry Act

The Industry Act is the primary legislative instrument governing the economic regulation of the water and sewerage industry in Tasmania.

In relation to pricing, the Industry Act provides for:

- an independent regulator (the Regulator) for the industry with clear accountabilities and responsibilities to ensure effective and efficient outcomes for the sector and the protection of customers;
- independent pricing regulation with a regulated entity (now TasWater only) required to submit a proposed Price and Service Plan to the Regulator which outlines the services, revenue requirements and operational requirements of the regulated entity. The Regulator bases its price determination on an assessment of the proposed Price and Service Plan submitted by the regulated entity; and
- the Regulator to be guided by legislated pricing principles when making a price determination.

¹⁴¹ The Regulator releases a new Guideline prior to the commencement of each price determination investigation. The current guideline for the fourth regulatory period is the *Tasmanian Water and Sewerage Industry 2022 Price Determination Investigation Price and Service Plan Guideline* which was published in April 2021.

Section 66 of the Industry Act - Price Determinations

Price Determinations are made in accordance with Section 66 of the Industry Act. In making a price determination, the Regulator must:

- a) adopt an approach and methodology which the Regulator considers will best meet the objective of this Act; and
- (b) determine prices, terms and conditions, including developer charges, for water services and sewerage services in accordance with the pricing principles referred to in section 68 or any principles prescribed by regulations under that section; and
- (c) consider any proposed price and service plan submitted under section 65 ; and
- (d) consider any customer contract; and
- (e) ensure that the price determination takes into account and clearly articulates any trade-offs between costs and service standards.

Section 66 also sets out the maximum prices in a price determination may be defined.

Section 68 of the Industry Act - Pricing Principles

The pricing principles in section 68 of the Industry Act are as follows:

- a regulated entity is to be given a reasonable opportunity to recover the efficient costs it incurs in:
 - providing a regulated service; and
 - complying with a regulatory obligation; or
 - complying with a requirement to make a regulatory payment under the Industry Act (except where the Industry Act provides otherwise);
- the price is to provide for efficient pricing by:
 - applying two-part pricing for water services based on the recovery of fixed costs and variable costs by way of a fixed charge and a variable charge (with the variable charge determined by the volume of water used as measured by a water meter); and
 - reflecting the costs of servicing particular customers or classes of customers in different locations, regions or schemes;
- the price is to provide effective incentives, with respect to a regulated service to:
 - promote economic efficiency;
 - reduce costs; or
 - otherwise improve productivity;
- the price is to allow a regulated entity to receive a return on assets used in providing the regulated service; and
- the price charged to a particular customer or class of customers is to reflect at least the costs that relate directly to providing the regulated service to that customer or class of customers to the extent that it is commercially and technically reasonable to do so.

Section 15 of the Industry Act

Section 15 of the Industry Act provides that the Regulator must have regard to the following matters in performing functions and exercising powers under the Industry Act:

- relevant health, public safety and environmental obligations;
- the promotion of efficient long-term investment in water infrastructure and sewerage infrastructure, so as to achieve the lowest sustainable costs of the provision of water services and sewerage services;
- the promotion of efficient pricing for regulated services;
- the impact of the rate of change of prices for customers;
- the maintenance of appropriate service standards for the provision of water services and sewerage services;
- the avoidance of regulatory duplication, so far as is practicable, through appropriate consultation with, and data collection from, other relevant persons;
- any matters relating to the water and sewerage industry prescribed in the regulations;
- any other matters that the Regulator considers relevant.

Water and Sewerage Industry Pricing Regulations

In addition to the pricing principles set out in the Industry Act, the Pricing Regulations contain additional pricing principles in relation to:

- pricing zones (nodal pricing);
- the structure of service introduction charges;
- the calculation of developer charges;
- the treatment of contributed assets; and
- the basis for setting fixed and variable charges (including the removal of free water allowances).

Part 2 of the Pricing Regulations outline matters to which the Regulator is to have regard in making a price determination (for the purposes of section 66(2)(f) of the Industry Act). Specifically:

- maximum allowable revenue;
- pricing zones;
- estimates of changes of prices over life of plan;
- developer charges policy; and
- service introduction charges policy.

Part 3 of the Pricing Regulations set out the following:

- additional pricing principles;
- full cost recovery from certain contracts;

- no double-dipping;
- contributed assets;
- service introduction charges;
- fixed charges;
- imposition of variable charges;
- when variable charges may not be imposed;
- metering of amounts of variable charges;
- developer charges;
- amount of developer charges; and
- miscellaneous fees and charges.

Water and Sewerage Industry Customer Service Regulations

The Customer Service Regulations set out minimum service standards for the water and sewerage industry. As required by the Customer Service Regulations, and to regulate the standards and conditions of supply for water and sewerage services, the Regulator is required to:

- issue a Customer Service Code;
- establish minimum service standard targets within the Customer Service Code; and
- require TasWater to develop a customer charter.

Customer Service Code

The Customer Service Regulations specify matters that must, or may, be included in the Customer Service Code. TasWater is required to comply with the Customer Service Code, which was last updated in November 2020.

Under the Code, TasWater is required to:

- meet the customer-related standards, procedures, practices and conditions for regulated services as set out in this code; and
- develop, issue and comply with a customer charter which meets the procedural and substantive requirements of this code and sets out the minimum service standards.

Impact of COVID-19 on the price investigation for the fourth regulatory period

In June 2019, in preparation for the fourth price determination investigation, the Regulator published a water and sewerage price and service plan guideline in relation to the fourth regulatory period. The Guideline required TasWater to submit its proposed Price and Service Plan (PSP) to the Regulator by 30 June 2020.

However, due to the impacts of the COVID-19 pandemic, the third regulatory period was extended by one year to four years ie the period from 1 July 2018 to 30 June 2022. In line with this extension, the

requirement for TasWater to submit its proposed PSP was deferred for one year, with a new submission date of 30 June 2021.

The Regulator subsequently published a revised water and sewerage price and service plan guideline for the fourth regulatory period in response to the extension of the third regulatory period. This guideline replaced the guideline published in June 2019.

Price and Service Plan Guideline

In April 2021, the Economic Regulator released a further revised PSP Guideline to assist TasWater to prepare its proposed PSP for the fourth regulatory period.

The PSP Guideline sets out the legislative and regulatory requirements that TasWater has to comply with when submitting its proposed PSP. The PSP Guideline also sets out the key steps and timing for the fourth price determination investigation.

For the fourth regulatory period, the Regulator intends applying an approach that reflects the following priorities:

- funding compliance investment in line with industry regulators priorities and expectations;
- ensuring TasWater has sufficient revenue for the efficient delivery of the required services; and
- continuing to manage the impact of price changes on customers (noting that the MoU (now incorporated into the Shareholder's Letter of Expectations) which expires on 30 June 2025 limits price increases to 3.5 per cent for the first three years of the fourth regulatory period with TasWater also proposing a 3.5 per cent price increase for 2025-26).

Given these potentially competing objectives there will be some trade-offs between priorities. The overarching efficiency objective of the Industry Act will be given priority to resolve any conflicts between pricing objectives and principles.

The Regulator will assess TasWater's proposed costs in providing water and sewerage services to customers together with the prices it intends charging over the regulatory period for the services it proposes.

In approving TasWater's proposed PSP, the Regulator must be satisfied that it will have sufficient revenue to meet its obligations and deliver the agreed standards of customer service while taking into account the impact of price changes on customers.

While the price determination investigation relates only to the fourth regulatory period, the Regulator will, in making its determination, give consideration to proposals that are presented in the context of a longer term plan. The Regulator may require TasWater to amend its proposed PSP if it is not satisfied that it meets the requirements specified in the Industry Act, Regulations, Guideline or the relevant Price Determination.

The Regulator is also required to ensure that any tariff reforms are consistent with the pricing principles under the Industry Act or represent a transition towards achieving those principles.

In assessing TasWater's proposed PSP, the Regulator considered the pricing principles and the requirements contained in the PSP Guideline.

National reforms and legislation

National Water Initiative

Tasmania is a signatory to the National Water Initiative (NWI) Agreement which provides a blueprint for water reform in Australia. As a signatory to the NWI, the Tasmanian Government has developed and published a plan of how it will implement its commitments to the NWI.

The Implementation Plan sets out the actions that Tasmania has already completed and provides information on the tasks and timelines to complete the remaining commitments and the context within which these actions are being implemented.

The NWI prescribes two limits on the revenue that can be earned by a regulated water and sewerage business:

- the upper revenue limit (full cost recovery); and
- the lower revenue limit (sustainability threshold).

Under the NWI principles, a water and sewerage business should recover revenue at least equal to the lower revenue limit but no greater than the upper revenue limit. Revenue above the upper revenue limit represents monopoly profits.

Consistent with the third regulatory period, the Regulator proposes to calculate only one annual regulated revenue limit for the fourth regulatory period. The annual revenue limit is a theoretical value referred to as TasWater's notional allowable revenue (NAR). Prices are then set such that the expected revenue does not exceed these limits.

National Performance Reporting Framework

The National Urban Water Utility Performance Reporting Framework (the NPR Framework) is one outcome of the NWI. The NPR Framework was developed by the signatories to the NWI Agreement.

The performance data and benchmarking reports produced under the Framework are an important resource, used by governments and the urban water sector.

Following the abolition of the National Water Commission in 2013, the Bureau of Meteorology (the Bureau) has supported the Framework and its collection of performance data, as well as the production and publication of the set of Urban NPRs.

TasWater provides annual performance data to the Bureau, with oversight of the data provided by Regulator.

The preparation of annual national performance reports that independently and publicly benchmark pricing and service quality, is an important commitment under the NWI. The reports align with a nationally consistent performance framework, built on reporting practices already in place in the urban water sector.

The performance data is subject to independent audit at least once every three years. Further information on the NWI Agreement and the NPR Framework is available on the Bureau's website at <http://www.bom.gov.au/water/npr/>.

Industry regulators

The Regulator is responsible for implementing and administering the economic regulatory framework for the water and sewerage industry in accordance with the Industry Act and its subordinate legislation.

Responsibility for environmental, fire safety, public health and dam safety regulation of the industry lies with the Director of the Environment Protection Authority, the Director of Public Health, Chief Officer of the Tasmania Fire Service (TFS), and the Secretary of the Department of Natural Resources and Environment Tasmania (DNRET), who is the Delegate for Dam Safety Regulation, respectively.

Economic regulation of the industry and, more specifically, the price determination investigation, focuses on both price and service outcomes. Through the development of the Customer Service Code and the PSP Guideline, the Regulator has sought to assist TasWater in addressing the Industry Act requirements in its proposed price and service plans, namely:

- identifying regulated water and sewerage services to be delivered to customers over each regulatory period and determining the service standards for those services;
- determining the notional allowable revenue required to deliver the regulated services to the agreed standards, based on efficient costs; and
- determining regulated prices (or tariffs) that meet the pricing principles and, when summed for each regulated service, do not exceed the notional allowable revenue.

The PSP Guideline requires TasWater, in conjunction with the other Tasmanian water and sewerage industry regulators, to establish regulatory compliance improvement outcomes to be achieved during the price determination investigation. These outcomes will be based on compliance improvement priorities identified by the Tasmanian industry regulators. Capex programs proposed in TasWater's PSP were required to reflect these compliance improvement priorities.

In conducting its price investigation, and making a price determination, the Regulator expects TasWater will spend a certain amount of capex. However, this expectation is not a cap on the amount of capex that TasWater can spend. This means that TasWater can spend in excess of this amount of capex, with the excess taken into account in calculating TasWater's notional allowable revenue, provided the expenditure was necessary (prudent) and the most cost effective solution was adopted (efficient).

The price determination does not, however, authorise capex as being sufficient to meet the compliance improvement priorities of the Tasmanian industry regulators. Compliance improvement and compliance enforcement remain the responsibility of the relevant Tasmanian industry regulators (the Environment Protection Authority, Director of Public Health, the TFS and the Delegate for Dam Safety Regulation).

Director, Environment Protection Authority Tasmania

The Director of the EPA and the EPA Board are responsible for administering and enforcing the *Environmental Management and Pollution Control Act 1994*. In discharging their functions and duties the Director and EPA Board are supported by EPA Tasmania.

The Director's responsibilities in regulating Level 2 sewage treatment plants (STPs) and other aspects of TasWater's sewage management include:

- undertaking, as a member of the EPA Board, environmental impact assessments in relation to proposals for new STPs or significant changes to existing STPs;
- imposing legally binding environmental conditions relating to the operation of STPs;

- applying the *Tasmanian State Policy on Water Quality Management 1997* as it relates to wastewater management activities;
- ensuring compliance with environmental conditions;
- investigating incidents involving STPs or the sewerage network; and
- applying enforcement provisions as warranted.

EPA Tasmania provides TasWater with advice on wastewater issues including those relevant to wastewater and biosolids reuse, trade waste, blue green algae management and environmental aspects of the operation of the sewerage system, including sewage pumping stations.

Director of Public Health

The Director of Public Health (and the Department of Health) is responsible for regulating drinking water quality and ensuring safety through monitoring and enforcing compliance with drinking water guidelines and policies established under *the Public Health Act 1997* and the *Fluoridation Act 1968*. This includes monitoring and enforcing compliance with the standards and requirements prescribed by the:

- *Public Health Act 1997* (and its associated Tasmanian Drinking Water Quality Guidelines 2015);
- *Fluoridation Act 1968*;
- *Fluoridation Regulations 2019*; and
- Australian Drinking Water Guidelines 2011 (updated in 2018).

The Director of Public Health is also responsible for developing and implementing strategies to protect, promote and improve public health. In discharging its functions and duties, the Director of Public Health is supported by Public Health Services, which is part of the Department of Health.

Tasmania Fire Service (TFS)

The Tasmania Fire Service (TFS) is responsible for fire safety in Tasmania.

TasWater's obligations under the Industry Act, with respect to fire safety, include:

- installing fire hydrants in its water infrastructure at distances and locations as are necessary for the ready supply of water to control and extinguish fires; and
- keeping its water infrastructure charged with water where that infrastructure supplies water to a fire hydrant.

The Industry Act permits TasWater reducing or restricting the quantity of water it supplies on days declared by the TFS to be days of total fire ban. Limiting non-essential water use such as garden watering or lawn sprinklers on days of total fire ban can help to ensure that the TFS and residents who may be facing a bushfire threat have water available for firefighting.

The *Water and Sewerage Industry (General) Regulations 2019* also permits TasWater to restrict the supply of water by all or any of the means including such things as specifying the days or times, or both, when water may be used or how water may be used).

Department of Natural Resources and Environment Tasmania

The Water Policy and Planning Branch in DNRET develops and coordinates policies relating to the regulation of the water and sewerage industry and supports the Minister for Primary Industries and Water in fulfilling the Minister's functions under the Industry Act.

The Agriculture and Water Division within DNRET also plays an important water management, planning and regulatory role for the State's water resources, including the administration and enforcement of the *Water Management Act 1999*.

The Water Management Act is part of Tasmania's resource management and planning system and provides for the use and management of Tasmania's freshwater resources through licensing, water trading, water allocations and dam permits.

Delegate for Dam Safety Regulation

The Minister for Primary Industries and Water also has regulatory oversight of dam safety. The Operations Branch, part of the Agriculture and Water Division within DNRET, administers the Water Management Act and the *Water Management (Safety of Dams) Regulations 2015* to ensure that dam owners meet their dam safety responsibilities.

The Minister's Delegate is the General Manager of the Agriculture and Water Division. The Delegate's key functions include:

- developing prescribed standards required for the design, construction, maintenance, surveillance and decommissioning of dams, and ensuring compliance with those standards, which are largely based on the criteria and guidelines produced by the Australian National Committee on Large Dams; and
- formulating measures to ensure the safety of dams and, in particular, plans to remove or minimise risks to persons, property or the natural environment arising from a dam safety incident.

Ombudsman

A customer dissatisfied with the outcome of a complaint made under TasWater's customer complaints process may refer the complaint to the Tasmanian Ombudsman (the Ombudsman) under the *Ombudsman Act 1978*. It is a condition of TasWater's licence that it must comply with any recommendations made by the Ombudsman relating to a complaint (section 77 of the Industry Act).