

3 REGULATORY COMPLIANCE IMPROVEMENT

Broader regulatory compliance improvement and compliance enforcement across the water and wastewater sector remains the responsibility of the relevant Tasmanian industry regulators, being the EPA, Director of Public Health (Department of Health and Human Services) and the Secretary of the DPIPWE, who is the Delegate for Dam Safety Regulation.

Improvements in regulatory compliance are usually achieved through Capex, but may also be attained through achieving efficiency in Opex. Expenditure on regulatory compliance improvement over the second regulatory period, therefore, needs to underpin pricing proposals contained within TasWater's proposed price and service plan.

One of the key drivers of the Tasmanian Government's reform of the water and sewerage industry in 2009 was the need to improve the level of compliance with regulatory obligations. Due to the legacy issues inherited by the previous regulated entities and now TasWater, it is acknowledged that some non-compliance may not be able to be rectified for some time. In 2012-13, 1.1 per cent of Tasmanians serviced with reticulated water received non-compliant drinking water and twenty two drinking water supply systems operated with a permanent boil water alert. In the same period, 20 wastewater treatment plants were classified as substantially non-compliant (ie less than 75 per cent compliance). Compliance improvement plans and programs are, therefore, needed to ensure that the industry regulators' priority compliance improvement expectations are met.

The Economic Regulator consulted with officers representing the industry regulators prior to the release of this Draft Report and draft Price Determination to assess the extent to which the industry regulators were satisfied that the compliance improvement outcomes agreed with TasWater had been reflected in TasWater's proposed price and service plan. The Economic Regulator may recommend changes to the final Price and Service Plan to ensure that the respective industry regulators' statutory responsibilities are appropriately addressed.

The Tasmanian industry regulators are:

- The Director of Public Health, who is responsible for regulating water quality and fluoridation.
- The EPA, which is responsible for regulating wastewater treatment plants.
- DPIPWE, which is responsible for water licence allocations and dam safety.

A more detailed description of the respective roles and responsibilities of each of the industry regulators are set out in section 1.5 of this Draft Report.

This chapter outlines the Economic Regulator's understanding of the interactions that have occurred to date between the individual industry regulators and TasWater in terms of monitoring TasWater's efforts to improve regulatory compliance outcomes.

3.1 Director of Public Health

The Department of Health and Human Services (DHHS) administers the Tasmanian Drinking Water Guidelines (TDWG), which require TasWater to develop and implement, and update annually, a Drinking Water Quality Management Plan (DWQMP). An updated TDWG to be issued in 2015 will require TasWater to have the DWQMP independently audited. At the time of writing the Economic Regulator understands that TasWater was developing a new DWQMP, with a draft to be delivered to DHHS by December 2014 prior to finalisation in February 2015.

The TDWG closely align with the best practice management principles outlined in the Australian Drinking Water Guidelines (ADWG) 2011. The Economic Regulator understands that, where necessary, DHHS and TasWater will continue to consult on reviews and updates of the ADWG and TDWG.

In February 2014, the Director of Public Health provided TasWater with a priority list of non-compliant or inadequate drinking water supply systems which required urgent attention, with the intention of providing TasWater guidance for its capital works planning and, in turn, Capex for inclusion in its proposed price and service plan. When presenting TasWater with the priority list, DHHS noted that the list was developed following extensive discussions with TasWater and that many of the systems featured in the list already had works underway or planning had commenced. TasWater agreed, stating in its proposed price and service plan that the systems identified by DHHS feature heavily in its proposed capital works program and in the new DWQMP.

In addition to its specific priority list, DHHS provided TasWater with six general overarching priorities to guide its efforts to improve drinking water quality:

- investigate solutions for the upgrade or replacement of systems on Permanent Boil Water Alerts;
- comply with the Fluoridation Code of Practice;
- complete the reservoir roofing program;
- identify and implement solution to address disinfection by-product formation in non-compliant water supplies; and
- implement an audit program for the DWQMP against the TDWG 2015.

TasWater stated in its proposed price and service plan that it has a key focus on reducing the number of towns with poor water quality through a range of projects and investigations. Specifically, the proposed plan details a series of projects to address these overarching priorities and the specific towns and systems highlighted

by DHHS are to be addressed in the forthcoming DWQMP, which TasWater states aligns with its proposed capital works program for the second regulatory period.

TasWater consulted with DHHS on the proposed price and service plan in June 2014. In response DHHS noted that the proposed plan failed to include any detailed information regarding the magnitude of Capex planned for the second regulatory period and did not give any indication as to how the money would be apportioned between competing priorities. DHHS also believed that providing a full list of planned Capex and a detailed breakdown of the planned investment across all of the drivers of Capex (such as ‘compliance’ and ‘investment’-related works) would be beneficial. The Economic Regulator understands that TasWater subsequently provided DHHS with a Capex spreadsheet for the second regulatory period, which indicated that most of DHHS’s priorities were to receive the benefit of at least some investment during the upcoming period.

3.2 Environment Protection Authority

The Director, EPA can issue TasWater with directions, most notably in the form of Environment Protection Notices. These notices serve to update ageing permits for TasWater’s wastewater treatment plants (WWTPs) through issue of contemporary environmental compliance requirements. The EPA regulates Level 2 wastewater treatment plants ie plants with a throughput volume greater than 100kL/day.

As of June 2014, only 4 per cent of TasWater’s WWTPs complied with discharge limits, indicating a need for major improvements and significant investment into sewage treatment infrastructure (although, in 2013-14, 83 per cent of treated wastewater volume was compliant). Upon the formation of the regional corporations, the EPA required each corporation to submit a Wastewater Management Plan (WWMP) outlining the investments and actions that would drive compliance. With the amalgamation of the three entities into TasWater, these plans have been merged and updated. The Economic Regulator understands that, as for the DWQMP, TasWater is currently preparing a new WWMP which is to be submitted in draft form to the EPA in December 2014. This plan includes a comprehensive risk assessment of TasWater’s WWTPs and a range of capital upgrades and operational initiatives that will drive improvement.

The Economic Regulator understands that the EPA has had significant input into the previous regulated entities’ WWMPs and also provided a priority list to assist TasWater’s formation of the new plan.

In addition to investment for refurbishing and replacing ageing infrastructure, the Economic Regulator understands that TasWater is looking to improve management of environmental incidents and sewage spills with investment in remote alarming and telemetry systems and an updated Emergency and Incident Management framework.

The Economic Regulator also understands that the EPA was consulted about TasWater’s proposed Capex for the second regulatory period. The EPA noted that the projected wastewater related Capex for the second regulatory period, as

contained in TasWater's proposed price and service plan, was significantly lower than estimates provided to the EPA in June 2014. The EPA was waiting to assess what Capex commitments are provided in TasWater's draft WWMP.

The EPA was also concerned that there were not any contingencies built into the forecast Capex plan to allow for upgrade requirements which may become evident after the Price and Service Plan is finalised, but which require the project to commence prior to the start of the third regulatory period. The EPA identified a lack of explanation with respect to prioritisation of the various Capex projects focused on upgrading sewerage reticulation.

The EPA has also provided feedback to TasWater on a regional basis. In relation to the southern region, the EPA observed incremental improvement in Capex planning in terms of refinement of project scopes and state-wide prioritisation. The EPA expects that improvements in planning will carry over into improved performance against Capex commitments in this price and service period. The EPA noted that some key projects are significantly delayed, but accepted that while this was not ideal, in some cases the revised timeframes provided a more realistic view of what is achievable. The EPA encouraged TasWater to utilise additional freed up funds for immediate implementation of smaller scale projects leading to improvements at high priority, underperforming WWTPs.

For the northern region, the EPA noted that generally progress was slower than anticipated and incremental, rather than leading to acceptable solutions in the medium to long term. However the EPA stated that progress was reasonable over the first regulatory period and was satisfied with what was outlined in the Capex spreadsheet, even though significant challenges remain to be resolved.

For the northwestern region, the EPA noted TasWater's poor progress to date with the implementation of the approved WWMP, but hoped that TasWater's performance would improve during the second regulatory period. The EPA also expressed concerns regarding delays to projects associated with higher priority plants.

3.3 Delegate for Dam Safety Regulation

The Secretary of DPIPWE is the dam safety delegate. TasWater is responsible for approximately 200 water and wastewater storages, lagoons and weirs which fall within the definition of a dam under the *Water Management Act 1999*. TasWater recognises that a major dam failure causing asset damage and public safety issues is a significant strategic risk.

There are currently separate Dam Safety Management Plans (DSMP) for each of the northern, northwestern and southern regions. These plans have been developed to provide a business wide risk based framework for the management and mitigation of dam safety risks to ensure they do not pose an unacceptable risk to the public.

The Economic Regulator understands that the three existing regional DSMPs and the Dam Safety Improvement Program (DSIP) will be consolidated into a single TasWater DSMP by early 2015. DPIPWE agreed to the DSMPs for the former

regulated entities and will be consulted with in the development of TasWater's DSMP. An up-to-date state-wide DSIP was approved by TasWater's board in February 2014 and the DSMP Annual Progress Report was also approved by TasWater's board in June 2014.

DPIPWE noted that there was little detail in TasWater's proposed price and service plan on dam safety and raised concerns about TasWater's capacity to deliver on its planned Capex.

3.4 Summary

The Economic Regulator met with officers representing the other Tasmanian industry regulators following the receipt of TasWater's proposed price and service plan. The industry regulators' representatives indicated that they were generally positive about the proposed price and service plan. However, the representatives considered that the proposed price and service plan lacked detail such that it was difficult to comment on specific issues. In particular, initially there was not enough detail in the material made available to the industry regulators to assess TasWater's proposed Capex for the second regulatory period. In response, TasWater subsequently provided a spreadsheet which outlined its proposed Capex projects. The industry regulators also commented that consultation with TasWater had been limited leading up to TasWater's submission of its proposed price and service plan, whilst noting that discussions with TasWater were ongoing.

Overall, the Economic Regulator considers that there appears to have been a reasonable level of consultation by TasWater with industry regulators regarding the proposed price and service plan. However the Economic Regulator notes that TasWater will not be submitting draft management plans (ie the DWQMP and the WWMP) to the relevant industry regulators until just before the Economic Regulator's Draft Report has been released for public consultation.

This is a less than ideal situation as, in the absence of these plans, it is difficult to assess whether the requirements set out in the Economic Regulator's PSP Guideline have been met in terms of agreement having been reached with the industry regulators with respect to the desired compliance improvement outcomes.

It is currently expected that final versions of TasWater's DWQMP, WWMP and DSMP will be available by the end of February 2015. This should provide a more robust basis to assess TasWater's proposed Capex priorities for the second regulatory period.

The Economic Regulator will consult with industry regulators after public consultation on the Draft Report and draft Price Determination, and prior to the release of the Final Report and final Price Determination.