



Water and Sewerage Operating Licences

Consultation Paper

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1 PURPOSE OF THIS PAPER

This Consultation Paper provides background information on the development and issue of water and sewerage operating licences to apply from 1 July 2011. The Paper outlines the relevant issues associated with the licence application process and invites submissions from interested parties on the three water and sewerage licence applications that the Economic Regulator (the Regulator) has received, as well as the Regulator's pro forma licence detailing the proposed licence conditions.

2 BACKGROUND

Legislation introduced in 2008 to reform Tasmania's water and sewerage industry established a new regulatory framework to apply to the industry. The new regulatory framework included the regulation of pricing, service standards and long-term investment in infrastructure by the Regulator.

The *Water and Sewerage Industry Act 2008* (Industry Act) requires any person or entity owning or operating water and sewerage infrastructure, or supplying water and sewerage services to others, to be licensed, unless otherwise exempted. The Minister for Primary Industries and Water has issued an Exemption Order to specify particular parties and services that will not be covered by the economic regulatory framework.

The new Order was developed giving consideration to the intended scope of the licensing regime. That scope is dependent upon:

- *Total number of connections* - where a provider services less than 250 water and/or sewerage connections in total in Tasmania, it should be exempted from the requirement to be licensed, on the basis that the scale of the provider's operation is likely to result in interruptions to services being considered by the broader community as relatively insignificant;
- *Scale of supply infrastructure* - where supply infrastructure is very simple, the compliance costs (eg asset management and operational audits) may be disproportionate to the benefits of economic regulation, and an exemption is more likely to be in the public interest;
- *Likelihood and severity of service interruptions* – where service infrastructure is complex or service interruptions are expected to be frequent, and the consequences of interruptions are significant in terms of their scale and scope, an exemption is less likely to be in the public interest;
- *Level of competition in the market* – where there are no competitors or alternative service options, or there are barriers to new market entrants, significant entry costs, and/or long lead-times to market entry, the impact of service interruptions is likely to be more significant and an exemption is less likely to be in the public interest;
- *Permanency of service* - where a service is provided for less than 12 months, the cost of compliance may outweigh the benefits and an exemption is more likely to be in the public interest; and

- *Price of service* - where a service is provided free of charge there is unlikely to be a net public benefit in requiring the service to be licensed.

On the basis of the above criteria, the new Order exempts, in broad terms, private water and wastewater schemes and incidental water suppliers. The Order also declares stormwater services and recycled and re-use water services as activities which do not require an operating licence.

The Regulator is to administer the licensing system established under the Industry Act.

The licences will place a number of regulatory obligations upon licensees through reference to various regulatory instruments such as codes and guidelines as well as requiring the preparation of a number of management plans in relation to matters such as asset and emergency management and compliance.

However, many of these regulatory instruments were not in place when the water and sewerage corporations commenced operations on 1 July 2009. Since that time the corporations have been operating under interim licensing arrangements.

The Industry Act provides the power for the Minister for Primary Industries and Water to grant interim licences for a period not exceeding two years. Interim licences that commenced on the 1 July 2009 were issued to the three regional water and sewerage corporations, namely:

- Southern Water (south);
- Ben Lomond Water (north); and
- Cradle Mountain Water (north west).

To facilitate the issue of full operating licences from 1 July 2011, the Regulator prepared a water and sewerage licence application form and, in March 2011, requested licence applications from interested parties.

Licence applications were due for submission by close of business 15 April 2011. The Regulator received licence applications from the three aforementioned regional water and sewerage corporations.

In accordance with its obligations under the Industry Act, the Regulator is to invite submissions on the licence applications received in advance of the Regulator making its determination in respect of those applications.

The Regulator is now seeking submissions from interested parties on the licence applications it has received from Southern Water, Ben Lomond Water and Cradle Mountain Water. In addition, comments are also being sought on the pro forma licence prepared by the Regulator. The pro forma licence provides an indication to stakeholders of what the final operating licences of the water and sewerage corporations might look like and the licence conditions that may be imposed.

Additional copies of this Consultation Paper, the licence applications received, and the pro forma licence are available on the Regulator's website at www.economicregulator.tas.gov.au.

3 ISSUES

3.1 Decision criteria

Before granting a licence, the Regulator is bound under the Industry Act to be satisfied as to each of the following criteria:

- that the applicant has shown honesty and integrity in previous commercial and other dealings;
- that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise;
- that the applicant has the capacity to carry out those activities in a manner that appropriately manages the risk to public and environmental health;
- that the applicant has made, and will maintain, appropriate arrangements in respect of insurance;
- such matters as the Regulator considers relevant, having regard to the public interest; and
- such other matters as are prescribed by the regulations.

Accordingly, the licence application form was drafted in a manner to ensure that the necessary information from the licence applicant would be acquired and, therefore, that the Regulator would be suitably informed when making its determination.

3.2 Scope of pro forma licence

The Exemption Order, issued by the Minister, has the effect of initially only requiring the three water and sewerage corporations to be licensed.

Accordingly, the Regulator has tailored the pro forma licence to the likely needs of the water and sewerage corporations in terms of operational and locational scope. However, the pro forma licence is purely indicative and the content of the final licences will be dependent upon the feedback provided during this consultation process on the three licence applications the Regulator has received.

3.3 Avoiding regulatory duplication

Consistent with the Regulator's approach to licensing in the electricity and gas sectors, the pro forma licence is based on the key principles of only including obligations upon the licensee and also avoiding any regulatory duplication or overlap.

That is, where the Industry Act places obligations upon the water and sewerage corporations, such as the necessity for them to comply with codes or pay licence fees, then these requirements should not be duplicated in the licence. Similarly, if other legislation places requirements on the corporations, such as meeting environmental and health obligations, these obligations should also not be duplicated in the operating licence. This approach provides for a more robust licence as duplication of legislative requirements in the licence would require the licence to be amended every time such obligations are amended in the relevant Acts. It is considered preferable that the licences be as stable as possible, so as

to avoid additional regulatory costs and uncertainty associated with the licence amendment process.

Any further issues identified by way of this consultation process on the three licence applications submitted to the Regulator, or the pro forma licence, will be addressed in a Statement of Reasons, to be completed following the close of the consultation period. The Statement of Reasons, once finalised, will be made available on the Regulator's website at www.economicregulator.tas.gov.au.

4 NEXT STEPS

Submissions from interested parties on the licence applications from Southern Water, Ben Lomond Water and Cradle Mountain Water, and the pro forma licence document indicating proposed licence conditions, will be considered prior to the approval of the applications and the subsequent issue of operating licences. Submissions should take into consideration the objective outlined in section 5 of the Industry Act and the decision criteria set out in subsection 35(7) of the Industry Act (which have been reproduced in 3.1 of this Paper). Licence conditions that the Regulator may impose are set out in subsection 37(2) of the Industry Act. The Industry Act is available on the Tasmanian Legislation website at www.thelaw.tas.gov.au.

Submissions are requested by close of business on 18 May 2011.

It is normal practice for all submissions to be published on the Regulator's website unless the author of the submission requests confidentiality in relation to the submission (or any part of the submission). Those parts of a submission that are requested to be kept confidential should be submitted as an attachment to that part suitable for publication.

The Regulator will not publish submissions which contain material that the Regulator believes is, or could be, derogatory or defamatory.

To facilitate the publication of submissions on the Regulator's website, submissions by email are preferred. Submissions and enquiries may be submitted to:

office@economicregulator.tas.gov.au

or to

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A copy of this Consultation Paper is also available on the Regulator's website www.economicregulator.tas.gov.au.