

## How to Complete a Regulatory Impact Statement

This Guidance Note is intended as a general tool to assist the preparation of both a Consultation Regulatory Impact Statement (RIS) as well as a Decision RIS. Some sections of this Guidance Note will be more useful than others, depending on the type and magnitude of the proposal. Consequently, this document is not intended as a definitive guide to the completion of all RISs.

Agencies are required to complete a RIS, if on completion of a Preliminary Impact Assessment (PIA), a regulatory proposal is found to have a 'medium negative' impact on business (including Government businesses), consumers or the economy. The RGU will notify agencies of the requirement for further analysis in the Compliance Assessment Notice issued on finalisation of the PIA.

Agencies should ensure that they are aware of the RIA requirements and adequacy criteria prior to the development of a RIS. These are provided in the RIS Adequacy Criteria at Appendix 3 of the *Regulatory Impact Assessment Guidelines for Western Australia* (RIA Guidelines). In addition, the RGU are available for further advice and assistance if agencies encounter difficulties in the completion of a RIS.

Agencies should progress the development of their RIS in consultation with the RGU from an early stage. This will minimise the extent of any changes late in the development process and ensure that there are no unnecessary delays in the finalisation of the RIS.

The RIS template provided on the Treasury website provides a number of questions that the RGU would expect a RIS to address at minimum, but agencies should provide a comprehensive assessment of the various impacts of the proposal commensurate with the overall effects and complexity. In addition, the RIS template provides a summary level outline of the type of information that should be included in each section, as well as some prompt questions to ensure agencies have provided the more general information required in a RIS analysis.

The outline of the purpose of each section is provided as 'hidden text' in the text box below the section heading. This allows the text to be hidden in order to provide a readable flow to the document, but also allows the text to be shown when required. This function is useful for consultation with stakeholders or approval by executives who are unfamiliar with the RIS format and requirements.

In order to show/hide this text, while in the template document, agencies should go to Tools – Options – View and in the section 'formatting marks' can toggle the check box called 'hidden text'. Alternatively, this can also be done by clicking on the paragraph marker. However, this will show all formatting marks in the document. It should also be noted that these sections of 'hidden text' in the document are protected and cannot be deleted or typed over, only hidden. In order to add text to the RIS template, agencies should type over the form text shown in grey under the text boxes in each section. Note: this text will disappear once text is typed.

A RIS should examine the costs and benefits associated with the proposal as well as the costs and benefits associated with the status quo (do nothing), non-regulatory options and alternative regulatory options where appropriate. It is not restricted to examining the impacts on business, consumers or the economy. A RIS may also include social, equity and environmental impacts.

There are two stages of the RIS process, the Consultation RIS and the Decision RIS.

- Agencies will first develop a Consultation RIS to provide stakeholders with an early understanding of the policy issues, likely costs and benefits of the proposed regulation and its alternatives. This document also provides an opportunity for those affected to respond to the proposal and may help the identification of other issues. The *RIA Guidelines* together with this *Guidance Note* will provide information on how to complete a RIS. However, the RGU are available to answer any questions or queries and can provide more specific guidance through one-on-one discussions, meetings, workshops and specialised training.
- Following consultation, the Consultation RIS is developed into a Decision RIS using the information obtained from consultation and the further analysis of the issue and impacts. The Decision RIS should provide a more complete analysis of the policy issue and the comparison of the various options. The Decision RIS should demonstrate the reasoning behind the selection of the preferred option, and should be provided to the decision maker prior to their consideration.

## **Executive Summary**

The Executive Summary of the Consultation RIS should provide an overview of the body of the RIS. This will include an early understanding of the main issues, including the issue to be addressed, and objectives that the agency aims to achieve through the introduction of the policy, the options initially considered to remedy the issue, an early estimation of the costs and benefits of each option, the consultation methodology and timeframes, and a preferred option (where identified) with an implementation and evaluation strategy. This should be able to be read as a stand alone document, and ideally as brief as possible.

Following consultation, the Decision RIS should be developed to provide a more complete assessment of the implications of the policy. The Executive Summary of the Decision RIS should provide a concise representation of the final document.

### **1. Statement of the Issue**

This section should provide a brief statement outlining the policy issue to be resolved. Where the outcomes expected under the status quo are worse (from society's point of view) than would otherwise be if action was taken to improve matters, government action may be justified.

The statement of the issue should identify the cause, nature and size of the problem in the absence of any further government intervention (status quo). This involves identifying and quantifying, where possible the costs and benefits of the current arrangements including the nature and probability of the adverse outcomes that will arise and who is likely to be affected by the adverse outcomes, including how wide-spread it is likely to be (eg. how many individuals, groups or firms etc. are likely to be affected), what harm, injury or other cost is likely to occur, and the magnitude of these impacts. This quantification should include any aggregate figures or proportional representation to help put the issue in a broader context.

The cause of the problem should then be identified, rather than its symptoms. For example, to determine if the problem is linked to market failure (through positive or negative externalities, information asymmetry) or regulatory failure (as either regulatory capture, or regulatory drift)

see page 4 of the *RIA Guidelines* (available on the Treasury website). This section should also demonstrate and explain why the problem cannot be addressed through market transactions.

If the problem is associated with existing regulation, it should be made clear why the current arrangements can/do not address the problem and whether the problem is related to the design or implementation of the regulation.

## **2. Objectives**

The policy objectives of the proposal should be specified in relation to the underlying problem.

This section should describe the policy's objectives, the benefits, outcomes, goals or targets that are sought in relation to the identified problem. The objectives should not be aligned to pre-justify a particular option. They should be specified broadly enough to allow consideration of all relevant alternatives. The objectives should focus on the desired final outcome rather than the means of achieving it.

The policy objectives identified in this section should align with expected benefits of the policy such as social goals, equity concerns or environmental issues. It should also aim to explain how these objectives would address the identified problem of market failure or regulatory failure (from the previous section) where possible. In the case where there is more than one policy objective, and there may be potential for conflict between objectives, it should be made clear how trade-offs between competing objectives will be addressed.

If the outcomes are subject to constraints such as time frames or budget, these should be made explicit in this section.

## **3. Options to Address the Issue**

The purpose of a RIS is to examine the advantages and disadvantages of the various options available to address an issue. Consequently, it would be appropriate to assess the policy options against the status quo. All options considered feasible for addressing the issue and capable of achieving the objectives should be listed in this section. It is important to set out the key features of each option where possible, as well as any assumptions made, to enable comparisons.

This section should identify both regulatory and non-regulatory options that may be effective in addressing the problem identified. Within regulation, a number of varying levels of regulation should be considered.

### *Status Quo*

The status quo is the continuation of the arrangements that currently exist or are relied upon to address the problem. It is the benchmark against which other options are assessed. It includes existing legislation or regulation relied upon, relevant government intervention or programmes that are currently in place. The description of the status quo should also include consideration of the relevant prevailing market conditions. This may include expected demand and supply trends and other features or characteristics of the market such as identifying the producers, suppliers, retailers, consumers and regulators who are affected by the issue.

### *Self-Regulatory Option*

Self-regulatory options should be considered where a group has the ability and an established framework available to exert control over its membership. For example, an industry body regulating its members. This can include standards used by industry such as the introduction of the Australian Standards or reliance on a consumer complaints mechanism, for example utilising the functions of the Energy Ombudsman.

### *Non-Regulatory*

Non-regulatory options may include the implementation of education campaigns, or provision of incentives such as subsidies to encourage a particular behaviour. Other non-regulatory options may include options such as agreement by negotiation and private contract. Before a regulatory option is adopted, agencies should determine if there is a less restrictive solution that would be equally effective.

### *Co-Regulatory Option*

Government intervention may be in the form of co-regulatory options, which combine elements of self-regulation and government regulation. Co-regulation involves Government oversight, enforcement or ratification of self-regulatory instruments.

### *Full Regulation*

In some circumstances policy objectives may only be directly achieved through regulation. For example, occupational licensing only allows those licensed professionals to practice such as a medical practitioner. Regulation may be prescriptive or performance based. Mandatory standards and codes control the outcome or process used, such as, the prescriptive regulation for the mandatory installation of air-bags in passenger vehicles. Alternatively, the performance-based standard may require that the driver of a vehicle must have a 50 per cent chance of surviving a head-on collision.

The Government can also regulate directly by prohibiting or requiring certain actions. This is how many traditional social and moral objectives are achieved, for example the prohibition of drink-driving, or requirement of the payment of taxation to State and Federal Governments.

New regulation should not conflict with or duplicate existing legislation or regulation. It may be appropriate to consider the impact of different layers of regulation applicable to the issue. It is therefore important to also consider how each option will complement the existing stock of regulation, including whether there is scope to reduce or remove regulation.

It is likely that, following consultation, further options capable of achieving the objective will be identified. Agencies should consider further feasible options and additional information on the feasibility of each option raised during the consultation process and incorporate these into the Decision RIS, with recommendations where appropriate.

Sometimes it is appropriate to narrow down the initial range of options in order to focus on a comprehensive analysis on a more limited set of options, as this enables analytical resources to be focussed on those options most likely to deliver net benefits. In this case, agencies should explain why certain options have been deemed unfeasible or inappropriate and subsequently rejected. However, if this is the case the RGU should be contacted to discuss the scope of the options examined.

## **4. Impact Analysis**

Having identified the range of feasible options to address the policy issue, the RIS should objectively analyse the impacts of the options in terms of costs and benefits (or advantages and disadvantages), qualitatively or quantitatively as appropriate for each option. A level of evidence commensurate with the potential magnitude of the issue being addressed should support the impact analysis. This section should preferably show how each option would incrementally affect the status quo.

The RIS encourages an evidence-based approach to policy development which helps to ensure that all options for addressing the problem have been considered and the benefits of the preferred option not only exceed the costs but also deliver the highest level of net benefit. This requires the provision of references and sources for any assertions made and for all estimates of costs, benefits and risks. Evidence may be quantitative, qualitative or both. However, in each case, the strengths, biases and limitations of the information and its sources should be explained. Where there are information gaps, or no data to support the analysis, this should be explicitly stated.

All groups or areas likely to be affected by the various options should be identified and the impacts on them specified to the best of the agency's knowledge. This may include impacts on business, consumers, individuals, Government (including local government), the environment and the wider economy and broader community. When determining the impacts of the options, it is important to consider these impacts from the perspectives of the various affected parties.

It may be the case that the Consultation RIS will not be able to identify all the groups affected and the impacts on them, however these may become apparent following consultation. All costs and benefits that are likely to be experienced by each identified group should be given consideration and the Consultation RIS should seek to ascertain whether all of these have been included. The Consultation RIS provides a mechanism to test the reasoning in the proposal and ensure that competing interests are recognised and considered.

The Decision RIS should identify the groups consulted, outcomes of consultation and contain a full assessment of options and impacts following consultation.

The impact analysis section of a RIS should provide information on the following:

#### *Range*

This section should identify the full range of impacts and provide a qualitative description or explanation of the impact. This description should include whether the impact is positive or negative, the type of issues it involves eg. economic, financial, social, environmental, equity, enforcement or compliance issues, and should present direct and indirect impacts and identify whether they are one-off, recurring or ongoing.

Relevant factors and parameters to establish the context of the problem may include the cost structure for establishing a business or doing business, market size (including potential size), structural market issues, external restrictions, laws of other jurisdictions, market concentration, degree of vertical integration, cost of production, other requirements on factors of production, product price, geographical area, possibilities of substitution, effects on other related markets and the number of consumers.

#### *Quantitative*

The impacts identified for each option should be quantified and expressed in monetary terms, where possible. Quantification helps to examine the costs of regulation and tests the assumptions and judgements involved in the formulation of policy advice (or direction). Monetisation of impacts makes it easier to compare the options against each other. The Office of Best Practice Regulation's (OBPR) Business Cost Calculator is a tool which may be used to calculate the monetary value of various impacts and is available on the OBPR website. Other techniques are equally useful for the quantification of impacts, such as economic shadow pricing.

### Qualitative

It is acknowledged that monetisation of all impacts is rarely possible or practical. Furthermore, a quantitative analysis that uses poor data, an incorrect model or an inappropriate technique can be less accurate than a part quantitative - part qualitative analysis based on good scientific data and other literature.

In cases where quantitative analysis is not possible or practical, the costs and benefits should be described as best as possible, drawing on any available qualitative evidence. The qualitative assessment of impacts associated with the options should be described with enough detail to provide a comprehensive understanding of the likely outcomes. A discussion of the likelihood of an outcome and the effect of that outcome should be provided in order for the decision maker to understand the impact of the regulation.

The impact chart below provides an example of a tool by which the likelihood of the impact and the level of impact can be determined in a qualitative way. This model aims to identify the likely impact of each option, through a qualitative analysis of the likelihood and potential consequences. For example, the diagram shows that, although there may be a significant consequence of a particular option, if the likelihood of this is low, the impact should be identified as medium. Alternatively, there may be an option with less significant consequences that is likely to occur more frequently. This diagram is designed to aid comparison between the different options.

Likelihood	High	Medium Impact	High Impact	High Impact
	Medium	Low Impact	Medium Impact	High Impact
	Low	Low Impact	Low Impact	Medium Impact
		Low	Medium	High
		Consequence		

### Summary of Impacts

This section should also include a comparison summary of the outcomes of the impact assessment for each option. The summary should include an understanding of the main costs and benefits and the risk of the impact in relation to the status quo, as well as the key assumptions underlying the estimates of the consequences. Once taking into account the quantitative and qualitative evidence provided for an individual option, the difference between the costs and benefits (net benefit) should be evaluated, where appropriate, considering the effects of risk and uncertainty, distributive impacts and the cumulative nature of any regulatory burden.

## 5. Consultation

Consultation with business and relevant stakeholders is essential to ensure that all affected parties have a good understanding of the issue of concern, and opportunities to contribute to the RIA process when a RIS is required.

Consultation covers all aspects of developing regulation — from the policy proposals' ideas stage through to post-implementation reviews. The nature and extent of consultation should be commensurate with the potential magnitude of the issue being addressed and the impact of proposed regulatory and non-regulatory solutions.

The RGU requires consultation to be effective and appropriate. In order to be considered effective and appropriate, it is expected that agencies, at a minimum, consult with stakeholders directly affected by the regulatory proposal and provide sufficient information on the issue, options and impacts. It is generally accepted that effective consultation requires:

- appropriate timeliness — consultation should start when policy objectives and options are being identified. Throughout the consultation process, stakeholders should be given sufficient time to provide considered responses;
- continuity — consultation should be a continuous process that starts early in the policy development process;
- targeting — consultation should capture the diversity of stakeholders and views of those affected by the proposed changes. This includes local governments, relevant government departments, agencies, business and the community;
- accessibility — stakeholder groups and the general public should be informed of consultation opportunities and be provided with information about proposals;
- flexibility — consistent consultation procedures can make it easier for stakeholders to participate. However, this must be balanced with the need for consultation arrangements to suit the circumstances of the particular proposal; and
- evaluation and review — policy agencies should evaluate consultation processes and continue to examine ways of making them more effective.<sup>1</sup>

The Consultation RIS should be made public on the agency website, where appropriate. The RGU encourages full public consultation, as it is considered best practice and there are often circumstances where all potential stakeholders affected cannot be identified. Proposals where consultation may be inappropriate include, some election commitments (where there are no implementation options available), Bills containing Cabinet-In-Confidence or commercial-in-confidence material and certain State Agreements. If limited consultation is proposed for a particular proposal, agencies should contact the RGU to discuss the options available, as inadequate consultation can lead to regulation that is inappropriate to the circumstances, costly to comply with and poorly adhered to.

In the Decision RIS, this section should outline how consultation was conducted, including the stages of the policy development process at which consultation was undertaken, the timeframes given, and the methods of consultation. The agency should articulate the views of those consulted, through the Consultation RIS process, outline how those views were taken into consideration or if not, provide a reasonable explanation as to why not.

## **6. Preferred Option**

Following analysis of all available options and assessment of feedback received through consultation, the agency should select that option which yields the greatest net benefit to society as a whole, taking into account the results of the quantitative and qualitative analysis, including distributional impacts, cumulative regulatory burden and risk and uncertainty. This analysis should flow logically from the preceding sections of the RIS.

In the Consultation RIS, an early preferred option may be identified, but may need to be adjusted in response to submissions.

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<sup>1</sup> Australian Government 2007, Best Practice Regulation Handbook, Canberra at 1.3 (The Australian Government requires these best practice principles to be followed by all agencies when developing regulation).

In the Decision RIS, it should be clear why one option is preferred over the others and provide reasons why the alternatives were rejected or found to be less effective. The Decision RIS should identify why the selected option results in the greatest overall benefit to society, how it will meet the objectives, how it is proportionate to the degree and type of risk presented by the issue and why it will not unduly impact other areas or sectors. This section may also discuss how the preferred option interacts with various State and Federal level priorities and legislation i.e. how it is, or is not consistent with other policy objective, regulation or national agendas.

## **7. Implementation and Evaluation Strategy**

Often the implementation of the policy can be an expensive part of regulation, through compliance activities, collection of data, evaluation of policy and monitoring. It is important to consider implementation issues and strategies such as staffing concerns and staged implementation prior to a decision to regulate. This section should also provide a brief description of the performance measurement and evaluation plan including information such as regulatory measurement or review arrangements to ensure continued relevance.

It is important that new policies are monitored and evaluated in order to ensure that they are working as expected, delivering the policy objectives and associated benefits. This also ensures that there have been no unforeseen or unintentional consequences of the implementation of the policy which have had an undesirable impact or have lead to inefficient, ineffective, or inappropriate regulatory outcomes. In order to evaluate the effect of regulation, agencies will need to develop measures of effectiveness, efficiency and adequacy of regulation. This should be done by identifying those indicators to be used, the data required, how it will be collected and by whom.

This section should identify when and how regulation will be reviewed and evaluated and should consider the following:

- Is there still a problem?
- Are the objectives being met?
- Are the impacts as expected?
- Are there any unforeseen or undesirable impacts?
- Is intervention still required, and addressed in the most appropriate form?
- At what stage in the future should the regulation be reviewed?





# Regulatory Impact Statement

New versions of this form are available from the Regulatory Gatekeeping website:  
<http://www.treasury.wa.gov.au/cms/content.aspx?id=3673>

## Office Use Only

TRIM Number

RG Number

Date Received

RGU Officer

## Information

When writing a RIS agencies should:

- Complete each relevant section in the RIS template sufficiently, to enable informed responses on the policy issue, objectives, options and impacts;
- In the consultation phase, ask questions which prompt respondents to confirm and challenge the analysis, including estimates of the magnitude, scope and range of the impacts. In addition, ask respondents if there are further problems, feasible options or further impacts that should be considered; and
- Ensure that any assumptions made are clearly defined.

## Submissions and Queries

**Name of Proposal**

Water Services Customer Code

**Department/Agency**

Department of Water

**Name of Contact**

Tammy Ng

**Position**

Senior Policy Officer

**Postal Address**

PO Box K822

Perth WA 6842

**Email**

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## RIS Details

Comments and submissions are invited on the proposal, in response to information provided in this RIS. Agencies may elect to make all responses to the Consultation RIS publicly available. Written comments and submissions should be forwarded between the start and end dates, as detailed below. This document will then be developed into the Decision RIS.

Agencies should provide the following information at the relevant stages of RIS development

**Consultation RIS Lodged**

Not required

**Consultation Start Date**

1 September 2012

**Consultation End Date**

2 October 2012

**Consultation Web-Link**

<http://www.water.wa.gov.au>

**Decision RIS Lodged**

## Executive Summary

The *Water Services Act 2012* was passed by the Parliament in August 2012. This Act represents a significant reduction in the regulatory burden applying to the water service industry. It consolidates and modernises a raft of outdated and burdensome water service legislation into a single statute. The *Water Services Act 2012* and the *Water Services Regulations* will replace approximately 400 pages of primary legislation and 450 pages of subsidiary legislation. The following legislation will be completely repealed:

- the *Land Drainage Act 1925*;
- the *Land Drainage (Validation) Act 1996*;
- the *Land Drainage Regulations 1978*;
- the *Land Drainage By-laws 1986*.
- the *Carnarvon Irrigation District By-laws 1962*;
- the *Harvey, Waroona and Collie River Irrigation Districts By-laws 1975*;
- the *Ord Irrigation District By-laws 1963*;
- the *Water Agencies (Preston Valley Irrigation Services) By-laws 1969*.
- the *Country Towns Sewerage Act 1948*;
- the *Country Towns Sewerage By-laws 1952*.
- the *Water Boards Act 1904*;
- the *Busselton Water Board (Supply of Water to Dunsborough) Act 2009*;
- the *Water Boards (Bunbury) Regulations 1997*;
- the *Water Boards (Busselton) Regulations 2002*;
- the *Bunbury Water Board By-laws*;
- the *Busselton By-laws: Penalties*;
- the *Busselton Long Service Leave By-laws*;
- the *Busselton Water Area By-laws 1994*;
- the *Busselton Water Board - By-laws Relating to Long Service Leave for Employees*.
- the *Metropolitan Water Authority (Miscellaneous) By-laws 1982*;
- the *Water Agencies (Charges) By-laws 1987*;
- the *Water Corporation (Authorised Capital) Regulations 1997*;
- the *Water Services Licensing (Extension of Enactments) Regulations 1997*.

In addition the following legislation will be partially repealed by the removal of water service related provisions.

- the *Country Areas Water Supply Act 1947*
- the *Country Areas Water Supply By-laws 1957*
- the *Metropolitan Water Authority Act 1982*
- the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;
- the *Metropolitan Water Supply, Sewerage and Drainage By-laws 1981*
- the *Rights in Water and Irrigation Act 1914*
- the *Water Agencies (Powers) Act 1984*
- the *Water Services Licensing Act 1995*

Among the Acts being consolidated is the *Water Services Licensing Act 1995*. This Act established the licensing regime that applies to the provision of water supply, sewerage and drainage services. Unlike many of the Acts being consolidated the *Water Services Licensing Act 1995* is comparatively modern and the provisions it contains have been incorporated

largely unchanged into the 2012 Act. There have however been a number of comparatively minor changes that standardise regulatory approaches across utility sectors, clarify the operation of the licensing regime and enable the Minister for Water to fulfil the role of policy setter for the water portfolio.

One of the changes to the existing regulatory regime is the introduction of the capacity to make “customer service codes” setting standards for the delivery of services to customers. These provisions are modelled on similar provisions applying to the gas and electricity sectors.

The code replaces existing customer service standards set as licence requirements applying to water service providers (WSPs). It clarifies water service providers’ obligations and reinforces regulation in areas such as complaints and conflict resolution, protection for customers experiencing payment difficulty and/or suffering from financial hardship.

The code will also replace a licence requirement that all service providers develop a “customer charter”. Having a single centrally developed code rather than individually developed customer charters will reduce costs and the regulatory burden on water utilities, particularly the smaller service providers which lack the staff and other resources needed to comply with this requirement.

The *Water Services Act 2012* requires that the first Water Services Customer Code will be made by the Minister. It will be subsequently administered, reviewed and amended by the ERA, acting on advice from the statutory consultative committee established by the Act.

The purpose of the Code is to:

- set minimum service standards for water services
- simplify the administration of water service licences
- improve transparency in WSPs’ obligations
- support the efficient and effective regulation of water services

Development of the Code commenced in early 2011 with the release of an Issues Paper and the establishment of a working group comprised of representatives from the water industry, customer groups and government agencies. The group met a number of times during 2011 and high level principles were agreed between working group members for the development of the Code.

A Discussion Paper was released on 1 September 2012 for a one month public consultation period. Comments received were analysed and incorporated into the final report, where appropriate. It is expected that the Code will come into effect in mid-2013, the same time as the *Water Services Act 2012* is proclaimed.

The Code will not impose significant costs on WSPs as it largely replaces existing customer protection requirements within the water operating licences. Specific impact on each proposed principle is discussed in section 4.

Having all customer service provisions in a Code will bring transparency and consistency for both customers and WSPs. It will make it easier for customers to understand their rights, provide more guidance to existing WSPs on their customer obligations and enable prospective WSPs to work out exactly what to expect ahead of making a licence application to the ERA.

Once the Code is enacted, the ERA will administer and monitor compliance with the Code by the licensees. The Act also enables the ERA to set up a consultative committee to provide advice to the Authority on matters relating to the Code and review the Code at appropriate times.

## 1. Statement of the Issue

Water services have strong natural monopoly characteristics. The lack of direct competition and essential nature of the services provided means that there is a need for service standard regulation, particularly where services are provided by the private sector.

There are 31 licensed water services providers in Western Australia supplying one or more types of water services to its customers including water, sewerage, irrigation and drainage services. The major water services providers are government owned and operated, including Water Corporation, AQWEST (the Bunbury Water Board) and Busselton Water. Most smaller service providers are local government authorities providing sewerage services in regional areas. There are also private licensed WSPs providing water supply and sewerage services including Hamersley Iron and Moama Lifestyle Villages Pty Ltd. All licensed water service providers are regulated by the ERA.

There are currently a number of customer service related provisions prescribed in WSPs licences established by the ERA. These provisions include the requirement to establish a dispute resolution process and a customer service charter. Under the *Water Services Act 2012* these provisions will be replaced by similar requirements in a single consolidated document to be known as the Water Services Customer Code. The Code will apply to all licensed water service providers.

The Code consolidates and standardises existing water service customer standards and provides a mechanism for these to be regulated by the ERA.

Having a Code will establish a level playing field for new entrants to the water industry. By clearly defining a set of rights and obligations of the water services providers, a Code can increase confidence in the regulatory regime. Regulatory certainty is a critical element within the water industry to attract new operators and investments.

## 2. Objectives

The Code serves to protect the interests of a customer by defining a minimum set of standards and conditions of service and supply that licensed water service providers must comply with.

It will apply to water service provision including water supply, sewerage, irrigation and drainage services provided to customers by licensed water service providers.

The purpose of the Code is to:

- set minimum service standards for water services  
It will enhance customer rights in setting service standards for all WSPs to comply with. This will bring consistency and transparency for the water services industry and presents a level playing field for existing and future WSPs.
- simplify the administration of water service licences  
Customer charters will no longer be a requirement under the Code. Rather, WSPs are required to comply with the Code provisions. This eliminates the need for a WSP to

develop a charter and have it reviewed every 36 months. This represents cost savings and reduces regulatory burden for WSPs in meeting compliance requirements.

Cost savings will also be achieved by the ERA which will no longer need to review 31 separate customer charters. Auditing, compliance and enforcement will be simplified as there will be common obligations on all licensees. This reduction in regulatory costs will be more significant for water service providers should cost recovery be implemented for the ERA's regulatory functions.

- improve transparency in WSPs' obligations

The Code will clearly prescribe WSPs' obligations to customers in a single document. Under the current situation, this information can be found in WSPs' licences and charters.

- support the efficient and effective regulation of water services

The Code will streamline the current regulatory arrangement administered by the ERA where licences will be amended to reflect the Code requirements.

### 3. Options to Address the Issue

Currently, the water service providers are required to comply with customer services provisions in the operating licences. These provisions include the establishment of a dispute resolution process and a customer service charter. The current regulatory arrangement limits the Government's ability to implement its policy agenda. The ERA is the industry regulator and does not have the role of setting policy for the industry. Identifying and setting customer service standards such as those in the Code are policy roles. While the Minister can currently identify standards that should apply there is no legislative requirement for the ERA to implement these.

WSPs are currently required by their licences to develop customer charters which outline a number of the terms and conditions of service.

There are three options to consider in overcoming some of the issues highlighted in the current regulatory environment in the water services industry and they are:

#### 1) Maintain Status Quo

Current water service customer protection arrangements rely on a mix of standards set by the ERA in licences and customer charters developed by WSPs and regulated by the ERA. This status quo is poorly supported by legislation and agency arrangements.

The ERA is an independent regulator and was deliberately created without a policy setting function. At the time that the ERA was established it was intended that technical standards for water services would be established by regulations made by the Governor under the *Water Services Licensing Act 1995*. This would have enabled the Minister for Water to establish minimum standards for the industry. Such regulations would however have been outside the scope of the ERA to regulate. Therefore the regulations have not been made and service standards have not been updated since the ERA was formed.

The development of customer charters by WSPs has proven to be problematic, particularly for small service providers who have lacked the resources and capacity to develop customer charters and keep these up to date.

## 2) Development of a Water Service Customer Code under the *Water Services Act 2012*

The electricity and gas industries have already established customer codes. The *Electricity Industry Act 2004* provides for the Code of Conduct for the Supply of Electricity to Small Use Customers, while the Gas Marketing Code of Conduct 2008 falls under the *Energy Coordination Act 1994* and the Compendium of Gas Customer Licence Obligations forms a schedule in the gas licence.

In Western Australia, electricity and gas retailers and distributors also comply with other Codes (the Metering Code, Network Quality and Reliability Code, Customer Transfer Code and Access Code and the Gas Marketing Code of Conduct). The ERA monitors compliance with these Codes and other regulations relevant to the energy industry.

There are Customer Codes for water services provision in other jurisdictions in Australia including Victoria, Tasmania, South Australia and the Australian Capital Territory. Similar to the Western Australian Water Services Customer Code, these Codes have customer protection framework setting minimum standards and requirements that WSPs have to comply with.

The Water Services Customer Code is a part of the Government's decision to reform water services legislation to make legislation clearer, easier to understand and streamline regulatory processes. The *Water Services Act 2012* gives the Minister for Water the ability to develop a Code of Conduct in allowing the Government to have greater power in determining the industry practice.

The development of the Code will be closely aligned with other utility providers simplifying the ERA's regulatory task. Consistent with the energy codes, it will be a requirement of the Code for WSPs to develop a financial hardship policy in assisting customers in financial hardship to manage their payment obligations. Unlike the energy sectors, it is currently not a mandatory requirement in the water industry. Having such a policy in place will benefit customers of WSPs as evidenced by a steady increase in the number of customers of major utilities service seeking financial assistance to meet payment obligations in the last few years.

Also, WSPs will be required to publish a leak allowance policy under the Code. Although major potable water supply service providers have such a policy at the moment, this policy is not widely publicised. By having information on leak allowance publicly available, customers can understand their rights to claim for such an allowance.

If the Western Australian water industry continue with same arrangement, it will lag behind the energy sector within the State and water industries in other jurisdictions where a Code of Conduct has been developed in recent years to better define service providers' specific obligations and customers' rights.

## 3) No regulation for the water services industry

There is an increasing level of private sector provision of services evidenced in the water industry in the last few years. If there is no regulation in the water services industry, new operators will set their terms and conditions in provision of water services that may disadvantage the customers.

## 4. Impact Analysis

If current regulatory arrangements were to be retained WSPs would remain obligated by their licences to develop customer charters. The ERA would be required to assess the appropriateness of these charters individually and audit compliance as a condition of licence. Retaining current regulatory arrangements would add costs to the operations of water service providers for the development and consultation required for charters, while the ERA would be required to devote time to ensure the obligation to develop and review charters was adhered to. A single centrally developed code is considered to be less burdensome on water service providers than individually developed charters.

A non-regulatory option would see the requirement to have a code or charter removed. This would reduce the level of protection provided to customers of these essential services as it is through the Code (or currently charters) that many of the customer protection measures, dispute resolution measures and minimum service standards for water service provider licences are established. Such deregulation is undesirable as customers of water service providers do not have the ability to change supplier should they receive poor service.

It is not expected that compliance with the Code will lead to significant costs for WSPs. Most proposed principles will be cost neutral to the WSPs as they are already subject to compliance requirement in their operating licences and customer charters. As stated previously, the development of the Code will consolidate the customer provisions that currently exist in the water operating licences and provide consistency by standardising differences that may exist between WSPs.

Specific principles proposed for the Code are:

### 1) Billing

**Context:** The Code will prescribe frequency of billing and the minimum bill content. Currently, there are statutory obligations for Government owned water utilities in regards to frequency of billing fixed charges but these do not apply to private WSPs. There is no policy or legislation on minimum bill content.

**New requirements:** The Code specifies minimum information to be provided on all bills issued by service providers. The requirements have been developed in consultation with industry and reflect current practice. These requirements will also introduce a minimum standard for new WSPs to comply with bringing consistency across the water industry.

**Benefits:** The requirements will ensure that customers are fully informed about how their bill has been determined and their rights to review. It will provide information where it has been necessary to estimate a bill, and where further information on their account may be obtained.

**Cost:** Setting these minimum billing requirements in the Code is expected to have little to no impact on WSPs. The requirements reflect current industry practices and are the minimum expected practice that would apply in a competitive market.

### 2) Metering

**Context:** The Code will prescribe the frequency of meter reading, how an estimation of consumption is conducted when a meter reading is not possible and require a WSP to offer a customer's right to request a special meter reading. While WSPs have its own policy in metering of water services, not all WSPs provide such information on their customer charters or websites.

**New requirements:** These requirements in the Code will be binding on the WSPs in the future and will replace statutory obligations that Government owned water utilities are subject to.

**Benefits:** Having this requirement prescribed in the Code will bring about transparency and consistency in metering practices across the water industry. It will also allow the customers to better understand their rights in respect to meter reading.

This can be a benefit translating to cost savings for the WSPs where customers will be less likely to complain to WSPs due to their lack of understanding in metering matters.

**Cost:** This obligation is expected to have little to no impact on WSPs. The metering obligations are consistent with current minimum industry standards.

### 3) Leaks allowance policy –

**Context:** A leak allowance policy provides for a discount to be provided to customers affected by a leaking property service pipe. Such allowances are standard industry practice across Australia. They are particularly necessary in circumstances where sandy soils and infrequent billing can lead to leaks not being detected for considerable periods of time.

**New requirements:** The Code will require water supply service providers to have a written policy made publicly available that details the circumstances under which a customer with a detected water leak can claim for an allowance. Currently, not all WSPs publish details about a leak allowance policy.

**Benefits:** The customers will be able to understand their rights by being able to access the information easily in the future.

**Cost:** It is expected that some additional customers may become aware of their rights to claim a leak allowance, reducing the revenue that water service providers would otherwise have earned. There could be additional printing costs for WSPs to provide information in a document form but this will be largely offset by not having to devote time and resources to develop and review a customer charter on a regular basis.

As a comparison, additional costs for printing have been estimated to be at \$600 to print 20,000 copies of double sided leaflet in colour and this can be offset by major cost savings for not having to review a customer charter estimated to be around \$70,000 for a major review which takes place every three years and \$60,000 for a minor review as required by the ERA.

### 4) Payment Difficulty/Financial hardship

**Context:** A financial hardship policy outlines a WSP's procedure in providing assistance to customers experiencing payment difficulties and are unable to meet their payment obligations. The Water Corporation and Water Boards have financial hardship policies in place. While smaller WSPs may not have one in place, they have arrangements to assist customers with payment difficulties.



**New requirements:** The Code will require all WSPs to have a financial hardship policy and have it reviewed at least every five years.

**Benefits:** A hardship policy assists water service providers in managing situations where customers are unable to pay their bills. Customers who will benefit from having a policy that clarifies their rights in seeking assistance during times of payment difficulty or financial hardship. The chances of a customer having water restricted due to non-payment will also be reduced.

**Cost:** While there could be costs for WSPs to develop and review such a policy, as these policies will follow existing established policies in this area the costs are expected to be minimal.

While the cost to review a financial hardship policy is estimated to be around \$25,000, this can be offset by not having to review a customer charter (approximately \$70,000 for a major review every three years).

## 5) Information and communication

**Context:** WSPs will be required to provide specific information as prescribed in the Code to customers.

**New requirements:** Information that water service providers will be required to provide includes information on fees and charges, bill payment options, discounts and concessions, customers' obligations and planned and unplanned interruptions. WSPs must also give customers access to interpreter services, National Relay Service (telephone typewriter service for people with speech and hearing difficulties) and provide documents in large print versions upon request.

**Benefits:** By having this requirement prescribed in the Code it will make it easier for new market entrants and customers to understand their obligations and rights respectively.

This requirement will bring consistency across the water industry where WSPs are currently providing a range of information on its websites and customer charters that can vary between service providers.

**Cost:** It is not expected that this requirement will impose significant costs for WSPs as the requirements reflect minimum normal industry practice. Most licensed service providers are already meeting these requirements and are providing a range of information on their websites and offering special services to customers with language or speech and hearing difficulties.

Refer to attachment 1 for further discussion on the impact of each principle provided in the Water Services Customer Code Discussion Paper.

## 5. Consultation

The following steps outline a consultative process that the Department undertook to prepare the Water Services Customer Code:

- In early 2011, informal meetings were held with key stakeholders to identify contentious areas relating to the provision of water services for the development of the Code.
- The first published document, *Developing a Water Services Customer Code – Issues Paper*, outlined issues associated with the Code. Its publication on the Department’s website was announced on the website and by email to a wide range of stakeholders. The Department also received clearance from RGU on the preliminary impact assessment to proceed to the consultation stage.
- The Department formed an external stakeholder working group – the Water Services Customer Code Working Group. The group is chaired by the Department and its members represent various interests to gain a balanced view on the requirements and content of the Code:
  - the water services industry - Water Corporation, Aqwest, Busselton Water and Western Australian Local Government Association
  - customer and consumer groups - Western Australian Council of Social Service and Tenants Advice Service
  - relevant government agencies - Department of Housing and ERA.
- The working group met on five occasions, starting in March 2011. It used the Issues Paper as the basis for discussions and made recommendations for a Discussion Paper. Additional meetings with relevant parties were held as necessary.
- The Department released a Discussion Paper in September 2012 for a 4-week public consultation period. Comments received were analysed and incorporated into the final report, where appropriate.
- Further discussions were held with some of the stakeholders to clarify and reassess some of the principles.

Major issues raised include the following:

- The Water Corporation objected to the Code applying to drainage services and non-potable water supply services. Non-drinking water services have been excluded from application of the Code. After consultation the Corporation agreed that drainage services could be covered by the Code.
- The Water Corporation sought to continue the capacity to vary conditions applying to it by agreement with customers and the approval of the ERA. This request was accommodated.
- The Water Corporation sought to define “urban areas” in the Code as equivalent to “metropolitan area” for the provisions dealing with reconnection of supply. This request was accommodated.
- The Water Corporation sought to ensure that the Code was not as detailed and onerous as the codes applying to the electricity and gas industries. This has been achieved as the water code will be a much shorter and comparatively simple document.
- Information retention obligations have been removed from the Code at the request of stakeholders.

- Customer service standard ranges have been removed from the Code at the request of stakeholders.
- The *Water Services Act 2012* enables the setting of a requirement for licensees to pay a set fee as compensation for poor service. Following representations from water service providers this obligation will not be included in the code.
- The Department sought the Minister's approval to commence drafting by Parliamentary Counsel's Office.
- There will be further consultation during the drafting phase where the key stakeholders will be given the opportunity to provide comments. The Department intends to organise meetings with stakeholders during the drafting phase scheduled from March to April 2013 to seek further comment in finalising the Code.

## 6. Preferred Option

The preferred option is to have a Code of Conduct for the water services industry. Existing and potential water providers, customers and regulatory bodies can benefit by clearly setting out the obligations of water services providers in a Code of Conduct. Having all customer provisions outlined in the Code is a far better approach than the current situation where customer protection requirements are contained in licences and customer charters. The Code will provide consistency and standardisation across the water industry, reduce regulatory burden for WSPs and promote efficient and effective water services regulation.

It is not expected that there will be significant costs imposed on existing water businesses given that they are already complying with similar provisions within the licence conditions.

## 7. Implementation and Evaluation Strategy

Once the Code is made, section 27 of the *Water Services Act 2012* gives the ERA the responsibility to administer and monitor compliance with the Code by the licensees. In carrying out this function the ERA is advised by the code of conduct consultative committee, a statutory body established under section 28 of the Act. In establishing the code of conduct consultative committee the ERA is required to endeavour to have a membership that represents the interests of both customers and licensees. The committee guides the ERA where it amends, replaces or reviews the Code.

The *Water Services Act 2012* specifies that the ERA must carry out a review of the operation and effectiveness of the code of conduct at least once every 5 years. While the Act does not specify how the ERA is to conduct the review it is expected that the review will examine matters such as compliance with the code and the degree to which it has delivered on the objective of protecting the interests of customers of water service providers.

In undertaking the review the ERA will be advised and guided by the consultative committee, established under the *Water Services Act 2012* to advise the ERA on matters relating to the Code.

## Certification

By certifying this form, you are agreeing that,

- this RIS has been prepared in compliance with the Western Australian Government's requirement for Regulatory Impact Assessment and to facilitate consultation and decision making effectively.
- to the best of your ability, all information provided within this document is true and correct.

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