Proposed class exemption under section 7 of the
Water Services Act 2012: Small local government
water services providers

Information and issues for consultation

The Department of Water is proposing to introduce a class exemption under the Water Services Act 2012 for small local governments who provide sewerage services and/or non-potable water services to fewer than 1000 connections. This consultation is to inform the public interest assessment of such an exemption. The exemption, if introduced, would be for an initial period of five years and reviewed at the end of that period.

What is an exemption?

In Western Australia, water services are regulated under the Water Services Act 2012 (the Act). A water service includes the provision of a sewerage service (collection, treatment and disposal), water supply, drainage service or irrigation servicer to another party via reticulated conduits and associated works. Under section 5 of the Act, anyone providing a water service is required to be licensed or exempted from licensing.

Section 7 of the Act allows the Minister (currently the Minister for Water) to grant a licensing exemption, provided that the exemption is not considered to be contrary to the public interest. The Department of Water undertakes a public interest assessment on each exemption application. The assessment considers a range of criteria, including public health, environmental impacts and social welfare. Exemptions may be granted on a case-by-case basis or for a class of water service providers.

A list of current licence exemptions can be viewed on the Department of Water’s website:


What services are proposed for this class exemption?

The proposed exemption would be limited to local government authorities who provide sewerage and/or non-potable water services to fewer than 1000 connected properties. There are currently 20 licensed local government water services providers
in Western Australia. All provide sewerage and/or non-potable services only (see Table 1 below). With the exception of the City of Kalgoorlie-Boulder (which services more than 1000 connections), all licensed local government water service providers would be eligible for the exemption.

Table 1. Local governments licensed to provide water services under the Water Services Act 2012

<table>
<thead>
<tr>
<th>Local government licensee</th>
<th>Number of connections</th>
<th>Services provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shire of Gnowangerup</td>
<td>75</td>
<td>Sewerage</td>
</tr>
<tr>
<td>Shire of Kent</td>
<td>98</td>
<td>Sewerage</td>
</tr>
<tr>
<td>Shire of Wickepin</td>
<td>105</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Victoria Plains</td>
<td>111</td>
<td>Sewerage</td>
</tr>
<tr>
<td>Shire of Dumbleyung</td>
<td>158</td>
<td>Sewerage</td>
</tr>
<tr>
<td>Shire of Jerramungup</td>
<td>162</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Brookton</td>
<td>165</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Goomalling</td>
<td>175</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Dowerin</td>
<td>182</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Koorda</td>
<td>184</td>
<td>Sewerage</td>
</tr>
<tr>
<td>Shire of Denmark</td>
<td>208</td>
<td>Non-potable water supply</td>
</tr>
<tr>
<td>Shire of Ravensthorpe</td>
<td>228</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Dalwallinu</td>
<td>259</td>
<td>Sewerage</td>
</tr>
<tr>
<td>Shire of Morawa</td>
<td>300</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Lake Grace</td>
<td>332</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Yilgarn</td>
<td>459</td>
<td>Sewerage</td>
</tr>
<tr>
<td>Shire of Coolgardie</td>
<td>464</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of Moora</td>
<td>695</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>City of Kalgoorlie-Boulder</td>
<td>14,000</td>
<td>Sewerage and non-potable re-use</td>
</tr>
<tr>
<td>Shire of East Pilbara*</td>
<td>N/A</td>
<td>Non-potable re-use</td>
</tr>
</tbody>
</table>

* Note: The Shire of East Pilbara owns and operates the wastewater treatment plant and re-use system in Newman. The sewerage collection network is owned and operated by the Water Corporation.

What is the purpose of water services licensing?

The water services licensing framework is designed to promote a well-functioning and sustainable water services industry through ensuring that licensees maintain assets effectively and that customers are provided with good quality services. The Economic Regulation Authority is responsible for administering the water services licensing framework.

What is involved in licensing?

Under the Act, licensees are required to ensure that an operational audit and asset management system review is undertaken on their water services scheme at least every two years (or longer, as determined by the Economic Regulation Authority).
The asset management system review assesses the operation of the water services system and whether the water services assets are being adequately maintained. The operational audit assesses the licensee’s compliance with required quality and service standards, including those prescribed under the Water Services Code of Conduct (Customer Service Standards) 2013 (Customer Code). The Customer Code constitutes a customer protection framework and includes provisions on billing, financial hardship and customer complaints.

**Why is this class exemption being proposed?**

The exemption has been proposed as a result of the findings made by the Department of Water in its internal review of local government water services licensing (undertaken between May and August 2015). Key review findings include:

- The regulatory cost of licensing small local government water service providers appears disproportionately high relative to the benefits of licensing.
- The cost and complexity of audits and reviews has increased substantially. There are currently around 190 licence conditions and audit costs have doubled over the past few years.
- Compliance costs are significant relative to the total cost of running the services (on average around one third) and are passed on to customers.
- There are sufficient incentives and obligations on local governments, under other legislation (local government, health, environmental), to manage sewerage assets well and in line with community expectations.
- Local government regulations have been amended to improve asset management across local government.

**How would customers be protected if an exemption is granted?**

Local governments are subject to regulation under several legislative frameworks, apart from the Water Services Act 2012 (i.e. the Health Act 1911, the Environmental Protection Act 1986 and the Local Government Act 1995). These frameworks provide regulatory safeguards to help to ensure that local governments provide adequate services and maintain assets for the benefit of current and future customers. For example:

- Section 71 of the Health Act 1911 requires local governments to ensure that all sewers are ‘constructed and kept so as not to be a nuisance or injurious to health’ and to keep the sewers ‘properly cleansed’.
- Regulation 19DA(3)(c) of the Local Government (Administration) Regulations 1996 states that a local government’s Corporate Business Plan is to ‘develop and integrate matters relating to resources, including asset management, workforce planning and long-term financial planning’.

Local government authorities are accountable to their ratepayers as councillors are elected by community members. Accordingly, it is in the interests of local councils to ensure that their sewerage and non-potable water supply systems are functioning well and that any issues (such as leaks or blockages) are resolved efficiently.
The exemption, if introduced, would be reviewed after five years to assess whether it is still in the public interest.

**Can conditions be placed on an exemption?**

Under section 7(4) of the *Water Services Act 2012*, the Minister may impose conditions on exemptions. Whilst the imposition of conditions creates an additional regulatory burden for the government (due to the need to monitor and enforce the conditions), they can strengthen existing incentives for ensuring effective asset management. Examples of possible conditions include:

- Incidence of blockages; e.g. less than 40 blockages per 100 km of sewer main per year.
- Requirement to create a sewerage reserve fund, which can only be used to finance sewerage related expenditure.
- Requirement to transfer a minimum of 10 per cent of annual sewerage revenue collected into the reserve fund.
- Requirement to complete a condition assessment on the sewerage assets every two years.

It is proposed that exempted service providers report compliance with any conditions in their annual reports.

**Questions for consultation**

1. The proposed exemption would be limited to 1000 customer connections – is this an appropriate size restriction?

2. What benefits are provided to the public through licensing small local government sewerage and non-potable water providers?
   - If it is considered that licensing provides public benefits, do these exceed the total costs associated with licensing (which are ultimately borne by the local community)?

3. Are there sufficient obligations and incentives (excluding those provided under the water services licensing regime) on small local governments to provide sewerage and non-potable water services to an appropriate standard?
   - Please provide details of such obligations/incentives.

4. What conditions, if any, should the exemption be subject to?
   - How would these be reported and monitored?

**What is the process for consultation?**

The Department of Water is seeking comments from stakeholders and interested parties in order to better inform its public interest assessment of the proposed class exemption. Submissions are requested before 26 October 2015 and are to be emailed to Ursula.Kretzer@water.wa.gov.au or posted to:
Dr Ursula Kretzer
Manager, Water Industry Governance
Water Industry Policy
Department of Water
PO Box K822
PERTH WA 6842

Following the completion of the public interest assessment, the Minister for Water will make a decision on whether to approve the class exemption. The reasons for the decision will then be published in the West Australian Government Gazette and the Department of Water’s website.

September 2015