Water and Sewerage Licensing Framework

Policy Paper

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Tasmania
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Purpose

A core component of the reforms to Tasmania's water and sewerage sector is the introduction of a licensing framework under the *Water and Sewerage Industry Act 2008.*

The purpose of this paper is to outline the State's urban water and sewerage licensing framework, and more specifically who requires a license to own or operate urban water and sewerage infrastructure (under the *Water and Sewerage Industry Act 2008),* and what specific activities require a license*.*

Licensing Framework

The licensing framework introduced by the Act operates by prohibiting a person from undertaking certain activities unless that person holds a licence under section 30 of the Act.

The activities for which a licence is required under section 30 are:

- the ownership or operation of water or sewerage infrastructure; and
- the supply of water or sewerage services by means of, or in connection with, water or sewerage infrastructure.

Section 30 of the Act sets out the requirement for a licence such that:

> *a person must not –*
>
> *(a) own or operate water infrastructure or sewerage infrastructure used for the provision of water services or sewerage services to another person; or*
>
> *(b) provide water services or sewerage services to another person, by means of, or in connection with the use of, water infrastructure or sewerage infrastructure; or*
>
> *(c) undertake any other activity that is declared by the Minister under section 31 to be a regulated activity –*
>
> *unless the person holds a licence under this Act authorising the relevant activity or is otherwise permitted under this Act to not hold a licence.*

Section 30 of the Act, clearly requires anyone that owns or operates water or sewerage infrastructure to hold a licence (as issued by the Tasmanian Economic Regulator). However, other elements of the licensing framework provide more detail around who requires a licence and for what particular activities.

The Act, for example, specifically exempts two activities from requiring a licence; these are services provided in connection with the supply of water for irrigation or electricity generation (see Section 3 of Act for details).

Beyond these specific exemptions, the Act does not differentiate between persons undertaking water and sewerage related activities which require a license under the Act. This means that the Act comprehensively captures all water and sewerage service providers

and infrastructure owners, and requires them all to hold a licence. In other words, small private businesses or cooperatives that provide water and sewerage services (including for example, shopping centre and caravan park owners), owners and operators of stormwater services, and owners and operators of recycle/re-use water services are required to hold a licence.

However, the Act also provides the means by which the scope of the licensing framework may be refined or adjusted. Two key mechanisms are prescribed in the Act which enables certain activities and/or entities to be exempt from the provisions of the Act:

- Section 10(1) enables the Minister to make an exemption order to exclude certain activities or persons from any provision of the Act subject to any conditions that the Minister considers appropriate; and

- Section 31 permits the Minister to, by order, declare an activity not to be a regulated activity for the purposes of the Act (a regulated activity is defined as "an activity for which a person is required to hold a licence or interim licence granted under this Act and includes the provision of a regulated service").

An exemption order pursuant to section 10 is best used when seeking to exempt a specific person from a particular aspect, or all aspects, of the regulatory regime (such as a small private water supply entity) while a declaration under section 31 is most appropriately invoked when intending to exempt all activities of a particular nature from the regulatory regime, regardless of who is undertaking that activity (such as providing a stormwater service).

An exemption under the Act does not displace any health or environmental compliance obligations, but rather excludes a person or activity from being subject to specific elements of urban water and sewerage economic regulation (Box 1). It should be noted that various providers could be exempted from requiring a licence but this would not exempt them from certain public health and environmental obligations.

Box 1: The main differences between licensed and non-licensed service providers

In the current regulatory framework any person that owns/operates water and sewerage infrastructure requires a licence unless the Minister exempts them or a particular activity through an Exemption Order.

If a person/organisation is exempt from holding a water and sewerage licence they are still required to comply with health and environmental compliance obligations. The Tasmanian Drinking Water Guidelines outline public health obligations and Environmental Protection Notices issued by either the Environment Protection Authority or local councils impose environmental conditions and or standards of operation on particular activities.

If a person/organisation holds a licence they are required to comply with health and environmental obligations, as well as obligations specified in the Water and Sewerage Industry Act. These include service and performance standards, customer complaints processes and protocols, reporting and monitoring requirements, asset management plans and processes, and independently regulated prices.

There are obviously both costs and benefits associated with receiving a service that is provided by licensed operators.

Who requires a licence?

The Minister has issued a section 10 order which exempts particular types of service from requiring a license and therefore exempts persons/businesses from complying with unnecessary economic regulation (Box 2).

Box 2: Section 10 Order – types of services that are exempt from requiring a licence

The following activities are exempted from requiring a licence in order to own or operate water and sewerage infrastructure:

(a) providing water and sewerage services to another person free of charge; or
(b) providing water and sewerage services to less than 250 customers; or
(c) providing, while owning or managing a caravan park, water and sewerage services to a person occupying a site within the caravan park; or
(d) providing, while owning or leasing a building, water and sewerage services to a person who occupies the building; or
(e) providing, while owning or managing a shopping centre, water and sewerage services to occupants of the centre.

In addition, the following businesses are exempted from requiring a licence in order to own or operate water and sewerage infrastructure. The reason for their exemption is because the water and/or sewerage services are only incidental to their main business activity.

(a) Hydro Tasmania for the provision of drinking water services by the Trevallyn Dam;
(b) Hydro Tasmania for the provision of drinking water services by the Poatina Canal; and
(c) Minerals and Metals Group for the provision of reticulated drinking water services at Rosebery.

A number of factors have been considered in determining the shape and nature of the Section 10 Order and hence whether a person/business should be subject to the licensing regime or not. In general, it is considered that an exemption from the requirement to be licensed should be granted when the risk of a significant service failure occurring is low and/or when the consequences of a service failure would be considered by the broader community to be not significant.

The specific factors that have been considered when assessing whether the costs outweigh the benefits of requiring a person or activity to have a licence (and hence who should be exempt from the framework) are outlined below.

- *Total number of connections* - where a provider services less than 250 water and/or sewerage connections in total in Tasmania, they should be exempt 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 being 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.

The above factors reflect the scale and complexity of the Tasmanian water and sewerage sector, and ensure that only those services and providers or owners of infrastructure for whom a public benefit to regulate exists are required to have a licence under the Water and Sewerage Industry Act.

The application and/or consideration of the above factors indicates that there is unlikely to be any public benefit in licensing two broad classes of water and sewerage service providers and infrastructure owners, that is small service providers and/or infrastructure owners and incidental service providers and/or infrastructure owners (Box 3).

Box 3: Classes of service providers and infrastructure owners exempt from requiring a licence

Small Water and Wastewater Schemes

There are a number of small water and wastewater service providers, as well as potential providers, for whom compliance with the obligations under the Act and the various codes and guidelines issued by the Water and Sewerage Economic Regulator would be likely to be arduous and costly.

The costs of complying with all the requirements expected to be part of the full licence conditions are very likely to be prohibitive for small service providers, and could lead unnecessarily to the cessation of at least some of these services.

Incidental Service Providers

Incidental service providers are those who run a business which is not a water or sewerage service under the Act, but who supply a water or sewerage service or whose infrastructure is used in providing a water or sewerage service, incidental to their main business activity. For incidental service providers, the defining criterion is that their water and/or sewerage service provision is a by-product or extraneous activity and is not a principal or integral part of their normal business activities. Examples include Hydro Tasmania and MMG, which permit their infrastructure to be used in the provision of a water service (Poatina's water is drawn from a Hydro canal, Ben Lomond Water extracts water stored behind the Trevallyn Dam, MMG owns part of the Rosebery water supply infrastructure). A number of business activities might potentially provide an incidental water or wastewater service.

Requiring incidental service providers to be licensed could lead to services being withdrawn, or becoming prohibitively costly, and is likely to have only a negligible or no effect with regard to furthering the objectives of the Act. This is because incidental services are typically provided to small numbers of people and there is no significant monopoly power wielded by the provider, even where it might exist. This means that there is a low level of customer service risk associated with not licensing incidental service providers and infrastructure owners. The small scale of typical incidental water and sewerage services in Tasmania also means that the costs of regulation would be likely to outweigh the benefits.

What activities require a licence?

The Minister has issued a section 31 order, which declares certain activities (Box 4) to be non-regulated activities and hence exempts them from requiring a license.

Box 4: Section 31 Order – types of activities that are exempt from requiring a licence

The following activities are declared to not be a regulated activity and hence are exempted from requiring a licence.

- The activity of providing a service for the collection or use of stormwater.
- The activity of providing a service for the recycling of water.
- The activity of providing a service for the re-use of water.

Stormwater Services

Stormwater services have been exempted from requiring a licence for a number of reasons, including:

- local governments are primarily responsible for these services and local governments recoup the cost of providing these services through rates; and
- there is a low risk of local governments charging monopolistic prices for these services.

Re-use and Recycled Water Services

Recycled and reuse water services have been exempted from requiring a licence for a variety of reasons. However, the main reason is that the recycle/re-use water sector in Tasmania is at the very early stages of development and in the absence of any compelling reason to regulate, it is considered that subjecting the recycle/re-use water sector to regulation under the Act is likely to stifle the development of the sector. In addition, it is likely that recycle/re-use water will be in competition with other water sources in most applications for which it is suited. This means that market power or monopoly, one of the main reasons for regulating network services such as reticulated water supplies, is unlikely to develop.

Accordingly, it is considered that there are no good reasons to regulate recycled and re-use water services until a market develops and there is evidence of market failure, or there is some other compelling reason to regulate the activities under the Act.