



Proposed class exemption under the *Water Services Act 2012* for some types of ‘water services’ provided on single premises under the ‘control or management’ of the water service provider

What is a class exemption?

Class exemptions are granted under Section 7 of the *Water Services Act 2012* (the Act). Water service providers who provide water services in a manner that accords with the definitions provided in the class exemption are exempt from the requirement to hold a licence under the Act.

What are ‘water services’?

‘Water services’ refer to the provision of water supply, sewerage, irrigation or drainage services. Each of these terms is individually defined in the Act.

A water supply service is a service principally constituted by the supply of water (whether potable or not) by means of reticulated conduits and other appropriate water supply works.

A sewerage service is defined as a service principally constituted by the collection, treatment and disposal of wastewater by means of reticulated conduits and other appropriate sewerage works.

What types of water services are included in the proposed exemption?

The exemption would apply to water supply, sewerage or drainage services provided to single premises under the control and management of the water service provider.

The exemption does not apply to ‘irrigation services’.

The exemption would cover water supply services where:

- ‘greywater’ is reused in accordance with the *Code of Practice for the Reuse of Greywater in Western Australia 2010*
- or
- ‘wastewater’ is recycled in accordance with the *Guidelines for the Non-Potable Uses of Recycled Water in Western Australia 2011*.

The *Code of Practice for the Reuse of Greywater in Western Australia 2010* defines ‘greywater’ as water sourced from washing machines, showers, baths, wash basins, spa baths, tubs, laundries and kitchens.

Wastewater is sewage. It does not include stormwater, surface water or groundwater of a type that is ordinarily drained from land as part of the provision of a drainage service.

What is the meaning of ‘under the control or management of a water service provider’?

Premises are under the control or management of a water service provider, regardless of whether or not part of the premises is leased to or occupied by other persons, if the water service provider is:

- the ‘owner’ of the premises¹
 - in the case of a strata ‘scheme’, the ‘strata company’ for that ‘scheme’²
 - the ‘administering body’ of a ‘retirement village’³
 - the ‘park operator’ of a residential park’ or ‘lifestyle village’⁴
- or
- the ‘occupier’ of commercial premises.⁵

Examples of water service providers that meet the above requirements include:

- strata companies established under section 3(1) of the *Strata Titles Act 1985*
- managers of single premises comprising apartments, townhouses, commercial offices, factory units, mixed use retail/commercial/residential properties, retirement villages, lifestyle villages, caravan parks, hotels, motels, tourist resorts, hospitals, shopping centres, university campuses and schools, where these properties are not subject to the *Strata Titles Act 1985*.

Under what circumstances would this exemption apply?

The exemption could apply to (but would not be limited to) the following situations.

- Greywater or wastewater is collected in an apartment block, office block, shopping centre, strata development, retirement village or residential park, treated on-site via an approved wastewater treatment unit and subsequently used for watering of the gardens on the premises and/or toilet flushing (non-potable supply).

¹ The *Local Government Act 1995* defines the term ‘owner’.

² The *Strata Titles Act 1985* defines the terms ‘scheme’ and ‘strata company’.

³ The *Retirement Villages Act 1992* defines the terms ‘retirement village’ and ‘administering body’.

⁴ The *Residential Parks (Long-stay Tenants) Act 2006* defined the terms ‘park operator’, ‘residential park’ and ‘lifestyle village’.

⁵ The *Local Government Act 1995* defines the term ‘occupier’.

- Groundwater is taken from a community bore by the operator of a lifestyle village, treated to potable standards using an approved on-site treatment method and supplied to residents of the village as drinking water.
- Stormwater is collected from roofs, drains or sumps by the administering body of a retirement village, treated using an approved on-site treatment method and supplied to village residents as a non-potable water source, via a third-pipe system (non-potable supply).
- A strata company contracts a private wastewater provider to build, own, operate and maintain a wastewater treatment facility for the strata. The treated wastewater is used to water the shared gardens in the complex.
- Wastewater is collected and treated by the manager or operator of a university campus and used to water the university's sporting ovals (non-potable supply).

How will the exemption apply in situations where the water service provider contracts a third party to undertake the water service?

In providing water services to customers, managers of premises may opt to contract out some or all activities. However, the class exemption would apply to the manager of the premises, who for the purposes of this exemption is the water service provider.

For example, a lifestyle village operator may engage a private wastewater service company to build, operate and maintain a wastewater treatment facility for the village. The exemption would still be applicable as the village operator (water service provider) is ultimately responsible for undertaking the water service, irrespective of whether the operator chooses to outsource this function.

What if part of the water service infrastructure is not located on the premises that are under the control or management of the water service provider?

For example, the operator of a lifestyle village may pipe wastewater to a wastewater treatment plant located on a neighbouring property. The treated wastewater is then piped back to the village for watering gardens or lawns. In this situation, part of the water service (the wastewater treatment) is not being undertaken on the premises managed by the village operator.

The treatment plant would still be considered to be held by the operator if there is an agreement with the landowner which permits the operator (or a third party contracted by the operator) to operate and maintain the treatment plant as required. So, this component of the service would still be considered as being undertaken by the operator (water service provider) on single premises under the control and management of that operator.

What are the risks for public health?

The risks to public health are considered to be minimal.

The Department of Health (WA) regulates the design, construction, connection and the management of required health standards of potable and non-potable water supplied by service providers under the *Health Act 1911*.

Specifically, the health-related aspects of sewerage services are regulated under the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*. There is also a *Code of Practice for the Design, Manufacture, Installation and Operation of Aerobic Treatment Units*. These two regulatory instruments will be replaced by a *Code of Practice for Onsite Sewage Management*, which is currently being drafted by the Department of Health. Local Government is responsible for administering the community health provisions of the *Health Act 1911*.

What other legislative protection do customers have?

There are several Acts that provide protection for tenants/residents of lifestyle villages, caravan parks and commercial premises by ensuring that services are provided to an appropriate standard. These Acts require that the provision of services is governed by a contractual agreement (between the owner/property manager and tenant/customer) and provide dispute resolution mechanisms.

A service contract minimises the risk of monopoly power abuse as it ensures that the property manager/owner has a commercial obligation to maintain the reliability of the service. The following is a list of key Acts (and Codes) that provide some form of customer protection in the types of arrangements outlined in this class exemption:

- The *National Construction Code of Australia* mandates minimum building standards to ensure that health and safety objectives are achieved. It incorporates the *Plumbing Code of Australia* which ensures compliance with specific Australian Standards relating to water distribution systems.
- The *Strata Titles Act 1985* provides for the creation of a management statement which may include terms covering the maintenance of water and sewerage services.
- The *Retirement Villages Act 1992* provides that a contract, between the administering body of a retirement village and the resident, covering the specific services to be provided to the resident, must be agreed to.
- The *Caravan Parks and Camping Grounds Act 1995* provides a licensing system for caravan parks and grounds and the *Camping Grounds Regulations 1997* make provisions relating to health and safety matters.

- The *Residential Parks (Long-stay Tenants) Act 2006* sets out the broad principles (or minimum standards) for the conduct of park operators and tenants in the residential park tenancy market. It ensures that the provision of services is covered by an agreement.
- The *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* amends the *Trade Practices Act 1974* and the *Australian Securities and Investment Commission Act 2001* by introducing restrictions on the ability of businesses (including property developers and strata companies) to incorporate unfair terms in consumer contracts governing, for example, the supply of services.

Is the exemption of these water services in the public interest?

The Department of Water considers that exempting these water services from the licensing requirement is in the public interest.

The class exemption will avoid the costs of requiring low-risk water suppliers to hold a water services operating licence. These include avoiding:

- administrative costs to the service provider, including initial licence application fees, annual regulatory reporting costs and the costs of operational audits and asset management reviews every two to three years
- the costs to government of enforcing and administering licences for these service providers.

The removal of this regulatory burden for small-scale water service providers will facilitate new entrants to the water services sector, particularly in the area of water recycling and treatment, thereby increasing competition and encouraging recycling.

The class exemption would also have social welfare benefits by facilitating new developments, particularly in areas where water service options are limited, due to limited groundwater supplies, or the high cost of connecting to or augmenting existing networks. This can improve the availability of affordable housing, particularly in the over-55s housing sector, where there is growing demand.

The primary purpose of the licensing regime is to prevent the misuse of monopoly power in water service provision. For these types of water services there is limited capacity to exploit monopoly power.

The interests of tenants and residents in properties managed by their water service provider are adequately protected through other Acts and therefore do not require the protection afforded by water services licensing.

Property managers have additional incentives to ensure that assets are well maintained and that services are reliable. In order to attract new customers, particularly in competitive sectors such as tourism and new developments,

property managers would need to maintain good commercial reputations and avoid adverse publicity. These incentives are present regardless of whether the water service function is contracted out, as the property manager has the ultimate responsibility for ensuring that services are delivered to an acceptable standard.

In a strata company, the members consist of the owners of the strata lots. Therefore, the company has an incentive to provide quality services, as the company members are the direct beneficiaries of those services.

Can exemptions be amended or revoked?

Yes. The Minister for Water retains the right, under section 7(5) of the Act, to amend or revoke a class exemption, or an exemption to individual providers of water services (whether exempted individually or as part of a class exemption) if it is in the public interest to do so.

Will conditions be applied to the exemption?

No. The Department of Water does not consider that there is a need to apply conditions to the class exemption.

What other types of class exemptions exist?

Separate class exemptions exist for:

- drainage services provided by local governments
- mining, oil and gas camps
- specific types of irrigation services and water supply services

Exemption for local government drainage services

Drainage services provided by local governments are exempt from requiring a licence under the Act. This exemption is the *Water Services Licensing (Local Government Drainage Services) Exemption Order 2011* which applies until May 2015.

Exemption for mining, oil and gas camps

Camps are used exclusively by the employees and contractors of mining, oil and gas companies for exploration, development, construction (including construction of related infrastructure such as rails and ports) or operations (including closure-related activities).

Camps do not include town sites gazetted under Section 26 of the *Land Administration Act 1997*. They also do not include other towns for people who are not employees of a mining, oil or gas company or their contractors, or mining towns such as Pannawonica, Dampier and Tom Price.

Exemption for specific types of irrigation and water supply services

Irrigation services are exempt from licensing provided that the water does not contain any treated or untreated wastewater and the service is not in the Gascoyne, Ord, Harvey, Waroona, Collie and Preston Valley irrigation districts proclaimed under the *Rights in Water and Irrigation Act 1914*.

Water supply services are exempt provided that the water does not contain any treated or untreated wastewater and where it is to be used only for industrial processing or manufacturing, mining or mineral processing, cleaning, thermal cooling, dust suppression or the construction, maintenance and cleaning of uninhabited buildings and infrastructure.

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