



WATER SERVICES
ASSOCIATION OF AUSTRALIA



Product Appraisal Terms and Conditions

Issued August 2023

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1 OVERVIEW

- (a) The Water Services Association of Australia (“WSAA”) represents the major Australian urban water agencies and is a company limited by guarantee under the *Corporations Act 2001* (Cth).
- (b) WSAA established the WSAA Product Appraisal Scheme (“the Scheme”) in 1998. The Scheme is designed to provide product suppliers with a cost-effective process for assessing and reviewing their product to determine if it is likely to be technically suitable for use in the water and wastewater infrastructure of WSAA members (see WSAA website for WSAA membership list) having regard to the product appraisal criteria set out in clause 2 below.
- (c) The Scheme is available for products that have been classified as strategic products by the WSAA Product Appraisal Technical Advisory Group (“the Network”) (see clauses 2(a) and 2(i)) and which are manufactured under a quality management system that is certified to the requirements of the Network (see clauses 2(e), 2(f) and 2(g)). However, WSAA reserves the right not to accept an appraisal application or publish product appraisal reports or certificates in relation to particular products or types of products at its sole and absolute discretion (see clauses 3.1.1 and 5.1(b)).
- (d) A key feature of the Scheme is that it is available both for established products with relevant Australian or International Standards and for new products not yet covered by formal Standards.
- (e) An appraisal certificate (“Certificate”) and/or a product appraisal report (“Report”) provides the conclusions of the Network in relation to the product appraisal (“Appraisal”).
- (f) An Appraisal is not a product approval. Irrespective of the conclusions within a Report or Certificate, the final Authorisation, Approval or Acceptance for Use of a product by any WSAA member lies with that individual member. In particular, WSAA does not undertake any due diligence in relation to whether products may infringe intellectual property rights, rights in relation to trade secrets or Australian laws or regulations.
- (g) Once an Appraisal is complete, an Applicant may choose to have the Report or Certificate published on the WSAA website in PDF format for free viewing or download by the public. WSAA members are advised of new Appraisal listings by alerts generated from the Network portal site. Where a Certificate is published the Report is made available in the members only section of the WSAA website.
- (h) Reports and Certificates may carry “Future Work” requirements for the Applicant for completion by a specified date.
- (i) Reports and Certificates each have a maximum life of 5 years. However, a shorter period may be specified. At the completion of the nominated period, the Applicant will be invited to have the product reviewed and the Report or Certificate reissued or allow the Appraisal to lapse.
- (j) WSAA Appraisals are governed by the terms and conditions set out in this document (“Terms and Conditions”).
- (k) No person has authority to change these Terms and Conditions without the written authority of the Product Appraisal Manager or another authorised officer of WSAA.
- (l) WSAA may, at its sole discretion, change these Terms and Conditions at any time and without notice, such changes are effective upon publication of the amended Terms and Conditions on WSAA's website.

2 APPRAISAL CRITERIA

- (a) WSAA product appraisal criteria ("Appraisal Criteria") are determined by the Network. The Network is a group of interested parties and technical specialists drawn from WSAA members.
- (b) The Appraisal Criteria are based on both relevant Standards and the collective knowledge and experience of WSAA members and industry specialists.
- (c) The Appraisal Criteria may include any product aspect considered relevant by the Network. For example, packaging, installation, operation, performance, supporting literature, etc. However, the Appraisal Criteria does not include whether the product may infringe intellectual property rights, rights in relation to trade secrets or Australian laws or regulations.
- (d) The Appraisal Criteria will normally specify that a Report or Certificate will be valid for a maximum of a five years subject to changes in the Appraisal Criteria and the provisions of clause 5 (Conditions for Publishing Product Appraisal Certificates or Reports). However, in the event that the Network wishes to re-evaluate a product in less than five years, a shorter period of validity for the Report or Certificate may be specified. The shorter period of validity is only likely to apply to new products or materials where it is felt that field performance is difficult to predict with laboratory testing.
- (e) The network accepts quality management system certification to AS/NZS ISO 9001 certified by an accredited Conformity Assessment Body.
- (f) The network accepts ISO Type 5 Product Certification as described in WSA TN-08.
- (g) The Network accepts testing undertaken by accredited laboratories and facilities as described in WSA TN-08.
- (h) The Network may change the Appraisal Criteria from time to time.
- (i) Appraisal Criteria are only available for products classed as strategic products by the Network. Generally, strategic products are limited to those products used within the water and wastewater network infrastructure that have the potential to affect the performance of water agencies.

3 THE APPRAISAL PROCESS

3.1 GENERAL

An Appraisal Project Manager manages the Appraisal process. The Appraisal process consists of three main parts.

3.1.1 Application for Appraisal

The Applicant gathers information on the Appraisal process and submits an on-line application. An invoice for an application fee is issued by WSAA upon receipt of the application. WSAA reserves the right, exercisable at its sole and absolute discretion, to reject an application for Appraisal, or to discontinue any Appraisal.

3.1.2 Preliminary Review and Cost Estimate

Following receipt of the application fee, WSAA develops the criteria for the appraisal and identifies gaps in meeting the appraisal criteria. Where requested, an estimate of the cost of completing the Appraisal will be provided to the Applicant.

NOTE: The estimated amount may increase or decrease depending on the ready availability of the required information and the time required in interpreting the information supplied. Progress payments will be invoiced on a monthly basis.

3.1.3 Appraisal

WSAA completes the Appraisal and publishes a Report or Certificate.

3.2 APPRAISAL PROCESS STEPS

The normal steps in completing the three parts of an appraisal are detailed below.

3.2.1 Application for Appraisal

- (a) A manufacturer or supplier (the Applicant) decides to seek an Appraisal.
- (b) From the WSAA website the Applicant:
 - (i) Confirms that their product is in a category that has been classed as a strategic product eligible for appraisal.
 - (ii) Checks that there is an existing WSAA Specification for their product category.
 - (iii) Obtains a copy of the Product Appraisal Terms and Conditions.
 - (iv) Obtains a copy of the Product Appraisal Schedule of Fees.
- (c) The Applicant submits an online Application and checklist together with supporting documentation.

NOTES:

- 1 The Application requires an Applicant to acknowledge that they accept and will comply with these Product Appraisal Terms and Conditions.
 - 2 Information must be supplied in suitable electronic form. Correspondence will be via email.
 - 3 The application fee is not the only fee for appraisal. See clause 3.2.2(f)(iv).
 - 4 Fees are not refundable unless the work for which the fees were paid is not commenced.
 - 5 Fees may be varied from time to time.
 - 6 WSAA reserves the right, exercisable at its sole and absolute discretion, to reject an application for Appraisal. See clause 3.1.1.
- (d) The Applicant may elect for WSAA to publish either a Report or Certificate on the WSAA website for public access. Notwithstanding the Applicant's selection, WSAA may, in its sole discretion, determine whether it approves the Applicant's selection.
 - (e) The Appraisal Project Manager determines whether WSAA will undertake the appraisal, and if so, determines the appropriate application fee and issues a tax invoice.
 - (f) Confidential information supplied to WSAA by the Applicant must be clearly identified as such.
 - (g) Confidential information will be reviewed by the Appraisal Project Manager and selected WSAA members drawn to form an Expert Panel for peer review of the Appraisal.
 - (h) Confidential information will not be distributed to any other parties unless WSAA is specifically authorised in writing by the Applicant to do so.
 - (i) WSAA will not be liable for disclosure of confidential information provided by the Applicant which the Applicant themselves disclose to the Network or other WSAA members.
 - (j) Confidentiality of material does not apply to information in the public domain or which is required by law to be disclosed.

The Applicant must not supply WSAA with any information that is subject to confidentiality or intellectual property rights obligations which preclude disclosing that information to WSAA in accordance with this Agreement.

3.2.2 Preliminary Review and Cost Estimate

- (a) The Appraisal Project Manager checks that the application fee has been paid.

- (b) The Appraisal Project Manager drafts an Appraisal Criteria for the product if it is in a category without existing Appraisal Criteria.
- (c) The Appraisal Project Manager undertakes a preliminary review of the Application and supporting information, identifies any gaps and where necessary requests further information to allow the review to be completed.
- (d) The Applicant provides the Appraisal Project Manager with the requested information.
- (e) The Applicant warrants that:
 - (i) it is entitled to provide WSAA with any information or materials in relation to the appraisal, and that any use by WSAA of such information and materials in accordance with this Agreement will not infringe the intellectual property rights of any third party or contravene any confidentiality obligations owed to any third party in relation to that information; and
 - (ii) the importation, sale and use of the product in Australia will not infringe the intellectual property rights of any third party.
- (f) The Appraisal Project Manager completes the Appraisal and provides the Applicant with:
 - (i) a draft of the Appraisal Report identifying any additional information that is required, the need for installation trials or any other requirement to progress the Appraisal. The review may also indicate where it is anticipated that the product may have difficulty in meeting the Appraisal Criteria;
 - (ii) details of any further testing, auditing or other activity that is required to determine if the product will meet the Appraisal Criteria;
 - (iii) the maximum period of validity of the Report or Certificate (subject to clause 2(d) and clause 5);
 - (iv) an estimated cost, where requested, for WSAA to complete the appraisal. This cost is in addition to the application fee and is an estimate only. Actual charges will be based on the hours worked and the relevant hourly charge; and
- (g) The Applicant decides either to continue with the appraisal or to withdraw from the process.

NOTES:

- 1 If the Applicant proceeds with the appraisal, WSAA may issue an invoice to the Applicant for progress payments for work undertaken. WSAA may discontinue an Appraisal if the Applicant fails to pay the invoice within 30 days of its issue.
- 2 An Applicant may advise WSAA in writing at any time that they wish to discontinue their appraisal.

3.3 APPRAISAL

- (a) An Applicant who decides to continue with their Appraisal application will provide the Appraisal Project Manager with any additional information that was identified as required during the preliminary review.
- (b) The Appraisal Project Manager undertakes the product appraisal and prepares a draft Report and Certificate (where applicable) for review and consideration by the Applicant and the Network.
- (c) The Appraisal Project Manager issues an announcement to the Network that the draft Report or Certificate is available for peer review.

- (d) The Appraisal Project Manager invites members from its Expert Panel to review the draft Report and Certificate (where applicable) including supporting information, including comments received from the Network at the close of the peer review period.
- (e) The Appraisal Project Manager prepares a final Report and Certificate (where applicable).
- (f) The Applicant reviews the final Report and Certificate (where applicable).and agrees to publication of the relevant Report or Certificate.
- (g) The Appraisal Project Manager publishes the Report or Certificate on the WSAA website for public access. Where a Certificate is published the Report is made available in the members only section of the WSAA website.
NOTE: A product appraisal Applicant becomes the Appraisal Holder ("the Appraisal Holder") when their Report or Certificate is published.
- (h) The Appraisal Project Manager provides a copy of the published Report or Certificate to the Appraisal Holder.
- (i) The Appraisal Project Manager advises
 - (i) WSAA members of the publication of the Report or Certificate by alerts generated from the Network portal site.
 - (ii) Urban water industry service providers through the WSAA Newsletters, which is published quarterly.

4 CONTENTS OF CERTIFICATES AND REPORTS

4.1 CERTIFICATES

A Certificate normally contains the following:

- (a) the Applicant's name;
- (b) the product;
- (c) product category
- (d) Appraisal Criteria;
 - (i) relevant standards,
 - (ii) WSAA Product Specifications or other Specifications
- (e) issued date
- (f) expiry date
- (g) recommendation.
- (h) schedules
- (i) future work (as appropriate);

4.2 REPORTS

A Report normally contains the following:

- (a) executive summary;
- (b) the Applicant's name;
- (c) the product;
- (d) scope of the Appraisal;
- (e) Appraisal Criteria;
 - (i) quality assurance Requirements;
 - (ii) performance requirements;

- (f) Compliance with Appraisal Criteria;
 - (i) compliance with quality assurance Requirements;
 - (ii) compliance with performance requirements;
- (g) fitting Instructions, training and installation;
- (h) product marking;
- (i) packaging;
- (j) Water Agencies' experience with the product or field testing report;
- (k) discussion (as appropriate);
- (l) future work (as appropriate);
- (m) summary; and
- (n) recommendation.
- (o) Appendices

5 CONDITIONS FOR PUBLISHING PRODUCT APPRAISAL CERTIFICATES AND REPORTS

5.1 AUTHORISATION OF REPORTS

- (a) The WSAA Board of Directors has authorised the WSAA Appraisal Project Manager to administer the Scheme.
- (b) The Appraisal Project Manager may at his/her discretion and subject to the terms and conditions contained within this document:
 - (i) suspend or cancel an Appraisal at any time;
 - (ii) publish or refuse to publish a Report or Certificate,
 - (iii) withdraw a Report or Certificate from publication, distribution or sale,
 - (iv) replace a published Report with a Certificate;
 - (v) alter the conclusion or scope of a Report or Certificate; or
 - (vi) take any other action the Appraisal Project Manager considers appropriate in the circumstances.
- (c) If WSAA replaces a Report published on its website with a Certificate, the period of validity for the Certificate is the same as that of the Report, unless otherwise notified by WSAA.
- (d) The Appraisal Project Manager will advise the Applicant or Appraisal Holder in writing within seven days of any decisions affecting them being taken.
- (e) If a published Report or Certificate is to be withdrawn, suspended or altered pursuant to clause 5.1(b), the Appraisal Project Manager may notify all WSAA members and other urban water industry service providers of the decision after notifying the relevant Appraisal Holder.
- (f) All communication from the Applicant or the Appraisal Holder must be in writing. Correspondence between the parties shall be sent via email.
- (g) A published Report or Certificate may only be transferred to another Applicant who satisfies the Appraisal Project Manager that they meet all the requirements of clause 5.2.
- (h) An Appraisal Holder may at any time advise WSAA in writing that they no longer wish to have their Report or Certificate published.

5.2 CONDITIONS FOR APPLICANTS

- (a) The Appraisal Project Manager may publish or vary existing Reports or Certificates for Applicants who satisfy the Network that:
- (i) the appraised product is produced in a manufacturing system that has certification acceptable to the Network. These requirements may be amended from time to time;
 - (ii) in all cases they will comply with these Terms and Conditions and abide by any undertakings that may be required by the Appraisal Project Manager consistent with these Terms and Conditions.
 - (iii) the appraisal application has been submitted in the prescribed form along with the relevant fees; and
 - (iv) information required for the appraisal process is supplied within a reasonable time.

NOTE: If information is not supplied within six months of the request being made by the Appraisal Project Manager, the application may be regarded by the Appraisal Project Manager as lapsed.

5.3 CONDITIONS FOR APPRAISAL HOLDERS

WSAA will continue to publish Reports and Certificates only for Appraisal Holders who:

- (a) ensure that the appraised product continues to be produced in a manufacturing system that has certification acceptable to the Network. These requirements may be amended from time to time;
- (b) only use a Report or Certificate in relation to the products that are covered by that Report or Certificate;
- (c) immediately discontinue any use of the Report or Certificate which WSAA considers to be improper and withdraw and correct any representations about the Report or Certificate which are misleading or deceptive or likely to be so;
- (d) warrant that all information made available to WSAA is to the best of its knowledge and belief, complete and accurate;
- (e) submit any planned changes to their product for appraisal before implementing those changes. Changes to the product cover not only the product itself but also such things as the:
 - (i) product range including the extension of the range through additional sizes, variants etc.;
 - (ii) method of manufacture of the product;
 - (iii) product packaging;
 - (iv) product warranty; or
 - (v) manufacturer's or Appraisal Holder's quality management system.
- (f) Where a product standard is revised during the period of validity of the Appraisal the appraisal holder shall ensure that the necessary changes to the manufacture of the product is initiated as soon as practicable and that the product certification licence is re-certified no later than one year from the publication date of the revised standard.

NOTE: Variation to the one-year period may be agreed where unavoidable circumstances apply.

- (g) Where an amendment to a product standard or a WSAA production specification is issued during the period of validity of the Appraisal the appraisal holder shall ensure that necessary changes to the manufacture of the product are initiated as soon as practicable and re-verification gap testing, where required, is undertaken no later than one year from the publication date of the amendment.

NOTE: Variation to the one-year period may be agreed where unavoidable circumstances apply.

- (h) request a review of a Report or Certificate whenever there is a change to the status of any test reports or certification submitted in support of the Appraisal application. This applies also to test reports and certification from manufacturers and suppliers of product components, ancillary products or other subcontractors undertaking manufacturing operations;
- (i) permit WSAA to review a Report or Certificate whenever WSAA changes any of the:
 - (i) WSAA Appraisal Criteria.
 - (ii) WSAA product appraisal quality management system certification requirements.
 - (iii) Terms and Conditions.

NOTE: WSAA may change any of the above from time to time.

- (j) document all changes made to the quality management system and make records of such changes available to representatives of WSAA on request.
- (k) advise WSAA in writing of any change of address of any of their activities relevant to their Appraisal (including the Report or Certificate of that Appraisal).
- (l) give representatives of WSAA reasonable access during working hours to the premises in which the goods subject of appraisal reports are manufactured or their related records are held. WSAA may request this access for the purpose of examining materials, processes, finished articles, methods of test, records or other material, which, in the opinion of WSAA, is relevant to an Appraisal (including the Report or Certificate of such Appraisal).
- (m) resubmit a product for appraisal no more than 5 years after the previous appraisal or at the time specified within the Report or Certificate.
- (n) pay within 30 days from the date of invoice:
 - (i) any fees set by WSAA in relation to administering the publishing of a Report or Certificate and in relation to any services provided in assessment, auditing, supervising, inspecting, testing or consulting; and
 - (ii) the reasonable costs of WSAA where these are associated with the improper use of a Report or Certificate by an Applicant and/or Appraisal Holder.

NOTE: The Appraisal Holder shall not be entitled to any refund of fees paid or costs incurred in the event of refusal to publish, withdrawal from distribution or sale or alteration of a Report or Certificate.

- (o) upon the termination of publishing or withdrawal of a Report or Certificate (however determined), immediately discontinue all use of the content of that Report or Certificate and all advertising material, packaging and other matter which contain any reference to the Report or Certificate.

5.4 CONDITIONS FOR WSAA TO WITHDRAW, ALTER OR CEASE PUBLICATION OF REPORTS OR CERTIFICATES

- (a) Without limiting the generality of the powers of the WSAA Board in relation to Reports and Certificates, the Appraisal Project Manager may exercise the powers the Board has given her/him as described in clauses 5.1 (Authorisation of Reports) if:
 - (i) the Network determines that an appraised product is failing prematurely or performing unsatisfactorily or being damaged when stored, handled, assembled, installed, operated or maintained in accordance with the manufacturer's recommendations; or
 - (ii) the Appraisal Holder does not comply with these Terms and Conditions.

- (b) A communication to an Appraisal Holder under clause 5.4(a) will outline the reason for the decision and indicate the actions that must be taken by the Appraisal Holder for the decision to be reversed.

5.5 LIMITATION OF LIABILITY

- (a) WSAA excludes from these Terms and Conditions all conditions and warranties implied by statute (including the Competition and Consumer Act, 2010), general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ('non-excludable statutory condition').
- (b) WSAA's liability to an Applicant or Appraisal Holder for breach of any express provisions of these Terms and Conditions or any non-excludable statutory conditions is limited at WSAA's option to providing the Appraisal process again.
- (c) Except to the extent prohibited by the Competition and Consumer Act, 2010 or any other applicable laws, WSAA excludes liability for any loss or damage suffered by an Applicant or Appraisal Holder (whether direct, indirect or consequential) arising in any way out of any services (including defective services) rendered by WSAA or out of the Applicant or Appraisal Holder's product, process or service the subject of a Report or Certificate by WSAA or any negligent act or omission of WSAA, its officers, employees, agents or contractors, including but not limited to profits lost and damage sustained or incurred as a result of a claim by a third person.

5.6 INDEMNITY

The Applicant and Appraisal Holder must indemnify WSAA from and against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred or awarded against WSAA) that WSAA may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of these Terms or Conditions by the Applicant or Appraisal Holder, including but not limited to, a breach in respect of which WSAA exercises an express right to terminate these Terms and Conditions;
- (b) any loss of or damage to any property, injury to or death of any person, infringement of third-party intellectual property rights, breach of confidentiality obligations, misleading and deceptive conduct or liability under other laws:
 - (i) caused by any negligent act or omission or wilful misconduct of the Applicant or Appraisal Holder or its officers, employees or suppliers; or
 - (ii) arising out of or in connection with the Applicant or Appraisal Holder's product, process or service that is the subject of a Report or Certificate.

5.7 WAIVER

The failure of WSAA at any time to require performance of any obligation under these Terms and Conditions is not a waiver of its right at any other time to require performance of that or any other obligation under these Terms and Conditions.

6 APPEAL PROCESS

- (a) The Appraisal process is intended through full information exchange to lead to consensus between the Applicant and WSAA on the Report content. However, in the event that differences cannot be resolved the appraisal process also provides Applicants and Appraisal Holders with an appeal process. The details of the appeal process are set out below.
- (b) A decision of WSAA or the Appraisal Project Manager to replace a published Report with a Certificate cannot be appealed by the Applicant or Appraisal Holder, and accordingly clause 6 does not apply in such circumstances.

6.1 FIRST APPEAL

- (a) If an Applicant or Appraisal Holder wishes to appeal against a decision of the Appraisal Project Manager made pursuant to clause 5 of these Terms and Conditions (excluding clause 5.1(b)(iv), which cannot be appealed), it must provide written notice to the Executive Director of WSAA within 14 days of receipt of written notification of a decision by WSAA.
- (b) Within 20 business days of receipt of an appeal the Applicant or Appraisal Holder will be sent a document setting out the grounds for the decision.
- (c) WSAA will convene a meeting with the Applicant or Appraisal Holder, the Executive Director of WSAA and the Appraisal Project Manager. The Executive Director may also nominate another person who possesses relevant experience or qualifications to attend the meeting to assist in evaluating the appeal. The Applicant or Appraisal Holder may appoint another person as their representative at this meeting.
- (d) The Applicant or Appraisal Holder and WSAA are not permitted to appoint legal representation to act for them at the meeting.
- (e) The meeting shall be convened within 90 days of receipt of the Applicant or Appraisal Holder's appeal. The Applicant or Appraisal Holder shall be given at least 7 days' notice of the meeting.
- (f) At the meeting, the Applicant or Appraisal Holder may present material in support of its appeal against the decision of the Appraisal Project Manager.
- (g) Within 7 days of the meeting the Executive Director of WSAA will inform the Applicant or Appraisal Holder in writing of WSAA's decision and also provide the reasons for this decision.

6.2 FINAL APPEAL

- (a) A final appeal shall be determined by arbitration.
- (b) If the Applicant or Appraisal Holder wishes to appeal against a decision of WSAA made under clause 6.1, written notice must be given of this within 14 days of being notified by the Executive Director of WSAA's decision.
- (c) Arbitration shall be affected by a single arbitrator who shall be appointed by the person for the time being holding the office of National President of the Institution of Engineers, Australia, upon the request of the Executive Director.
- (d) The appellant must provide written agreement to the Executive Director to pay the administration fee nominated by the Institution of Engineers, Australia.
- (e) The Applicant or Appraisal Holder must also provide written agreement to the Executive Director to pay the arbitrators fees in such manner, as may be directed by the arbitrator.
- (f) The arbitrator nominated by the Institution of Engineers must provide an estimate of costs to the appellant prior to the arbitration. This estimate will be approximate and may be limited to the arbitrator's hourly charges.
- (g) The Applicant or Appraisal Holder and WSAA may appoint another person to act as their representative for the purposes of this appeal. Any representative appointed will provide only technical assistance. No party to the appeal may appoint legal representation.
- (h) The decision of the arbitrator will be final.
- (i) On completion of the arbitration, the arbitrator will direct the disbursement of any monies that may be held in trust by the Institution of Engineers, Australia on behalf of the Applicant or Appraisal Holder.



WATER SERVICES
ASSOCIATION OF AUSTRALIA

Melbourne Office
Wurundjeri Country
Level 8, Suite 8.02
401 Docklands Drive
Docklands VIC 3008

Sydney Office
Gadigal Country
Level 6, 75 Elizabeth Street
Sydney NSW 2000

P (03) 8605 7600

E info@wsaa.asn.au

www.wsaa.asn.au