



Guideline 3 (2025): Varying a Price Determination (Re-opening)

Purpose

Guideline 3 (2025): Varying a Price Determination (Re-opening) provides guidance on the circumstances in which a price determination may be varied, and the process for varying a determination, including how a water business may apply to the commission to vary its price determination (via a re-opening of the determination). The guideline also sets out the commission's expectations of a water business when making an application.

This guideline does not impose any new obligations on a water business and does not alter obligations in any price determination or the Water Industry Standards.

Application of this guideline

The guideline has been published by the commission pursuant to section 13 of the *Essential Services Commission Act 2001*.

Annual adjustment of prices

In accordance with the applicable terms of the relevant price determination, the commission approves an amended price schedule¹ for each water business each regulatory year as part of its annual adjustment of prices process.²

¹ For most water businesses, the price schedule is Schedule 2 of their determination (however, some businesses have price schedules in Schedules 2 and 3 of their determination).

² Scheduled prices are adjusted by the commission in accordance with clause 2.3 and the relevant schedule of a determination (for most water businesses, the relevant schedule is Schedule 5). Water businesses may also apply for a revised tariff schedule in relation to a change to the tariff basket form of price control (under clause 3 of the determination for most businesses), or for adjustments relating to any pass through of specific costs specified in their determination (clause 5 or 6 for most businesses that have a specified pass through).

Application to vary a price determination

A water business that is seeking to vary its price determination or adjust its prices outside of the annual adjustment process may, in certain circumstances, make an application for variation to the commission.

When a water business may apply to vary its determination

A water business may seek a variation to its existing price determination (outside of the annual adjustment of prices process) in very limited circumstances:

- as a result of events which were uncertain or unforeseen at the time the determination was made (Uncertain Events Application);³ or
- where the determination expressly permits a variation to enable the pass through of specified changes in costs when relevant grounds or conditions are met (Pass Through Application).⁴

Where practicable, an application for variation should be made by 31 December, so that any variation can occur on 1 July of the following year, in conjunction with the annual adjustment of prices (see: Process for varying a determination).

Commission initiated variations

The commission may initiate its own process to vary an existing price determination or adjust the scheduled prices:

- as a result of events which were uncertain or unforeseen at the time a determination was made⁵ and/or
- on the basis of material error or unintended consequences,⁶ (Commission Initiated Variation).

If a water business identifies a material error or unintended consequence in its determination, it should notify the commission as soon as possible.

³ Uncertain and unforeseen events are covered under either clause 3 or 4 of a determination.

⁴ Goulburn Valley Water is the only water business to have such a clause (clause 7) in its determination at the time this guideline was published.

⁵ Uncertain and unforeseen events are covered under either clause 3 or 4 of a determination.

⁶ Material error or unintended consequences are covered under either clause 4 or 5 of a determination.

Uncertain Events Application

Examples of uncertain and unforeseen events, as well as exclusions, general principles, substantive requirements and procedural options relating to an Uncertain Event Application are set out in the *Uncertain or unforeseen events* clause of a price determination (clause 3 or 4, depending on the determination). Water businesses should refer to this clause in deciding whether to pursue an Uncertain Event Application, particularly to understand whether the basis on which a variation is sought constitutes an uncertain and unforeseen event.

Uncertain Events Applications are not intended as an avenue for a water business to manage the downside risk taken by the business in the context of risk sharing under the PREMO framework. This includes matters that should have been within the control of the business or should have reasonably been known or foreseen by the business (and managed or taken into account appropriately throughout the regulatory period). Any Uncertain Events Application should not undermine the risk taken by the business under the framework and reflected in approved prices.

The commission expects that risks that do not constitute an uncertain and unforeseen event are addressed by appropriate risk-sharing and management of risks under the PREMO framework.

What we expect a water business to do before applying for a variation

Before applying for a variation to an existing price determination, we expect that a water business will have:

- Considered the relevant provisions of its price determination to confirm that the grounds for seeking a variation have been met. In the case of Uncertain Events Applications, water businesses must turn their mind to whether an uncertain or unforeseen event has taken place by reference to the examples and exclusions set out in the *Uncertain or unforeseen events* clause of its Price Determination (clause 3 or 4, depending on the determination).
- Considered whether other steps or mitigation options can be taken before making the application.
- Sought attestation from the board of directors as to the completeness and accuracy of the information in the application and support for the application.

Process for varying a determination

When the commission receives an application to vary an existing price determination or commences a Commission Initiated Variation, it must decide whether the commission's standard consultation process for making a price determination will be followed, and publish reasons if it decides not to follow that process.

Except in very limited circumstances, the commission's standard consultation process will be followed. This process is set out in clauses 16(a) and (b) of the Water Industry Regulatory Order, and is also referred to in relevant clauses of all existing price determinations. This process includes the release of a draft decision and reasons and a consultation period in which submissions will be sought from interested parties, before the commission makes its final decision on the variation.

There are limited circumstances (where a variation is not sufficiently material or where it is sufficiently urgent) in which the commission may vary a price determination without following its standard consultation process.

A water business should expect and allow for the variation process to be completed over 6 months. Where practicable, an application for variation should be made by 31 December, so that any variation can occur on 1 July of the following year, in conjunction with the annual adjustment of prices.