Licence applications for existing infrastructure currently exempt under the Water Industry Competition (General) Regulation 2008

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Introduction

Private water or sewerage infrastructure that was under construction or operating prior to 8 August 2008 is currently exempt from requiring a licence under the Water Industry Competition Act 2006 (the Act). An operator/owner of such infrastructure has until 8 August 2010 to apply for licence(s) under the Act. Generally, the exemption then continues to apply until such time as a determination is made to either grant or not grant a licence.1

Once the exemption lapses, the construction, maintenance or operation of any such infrastructure, or the supply of water or the provision of sewerage services by means of such infrastructure, is prohibited without a licence.2 It is important to note that significant fines apply for carrying out these activities without a licence.3

This Fact Sheet has been prepared to assist with the preparation of licence applications in relation to existing private water/sewerage infrastructure or retail supply services that are subject to these transitional arrangements.

Making a licence application

IPART encourages applicants to contact the Utility Licensing team to discuss the licensing requirements, particularly if there is any uncertainty as to whether or not a licence is required. Applicants are also encouraged to seek advice regarding the licence application process prior to formally submitting the required application forms and supporting documentation.

The Utility Licensing team can be contacted either by:

- phone
  (02) 9290 8400 (general number)

- email
  compliance@ipart.nsw.gov.au

Licence application forms and guides can be obtained either by asking for an application form to be posted out or online from http://www.ipart.nsw.gov.au/water/private-sector-licensing/application-forms.asp.

Applicants for existing infrastructure should prepare their applications in accordance with the form and guide, and having regard to the information provided in this Fact Sheet.

1 The exemption period may cease where an applicant does not provide the necessary information required to consider the application.
2 See section 5 of the Act.
3 The maximum penalty is 10,000 penalty units (in the case of a corporation) and 2,500 penalty units (in any other case): s.5 of the Act. Note: One penalty unit is $110.
Information to be provided to IPART

The design of the application form and guide anticipated the majority of applications would be in relation to proposed infrastructure that is not already constructed or operating. As a result, applicants for the licensing of existing infrastructure / retail supply services that are subject to the transitional arrangements will need to keep this in mind when reading the form and guide. For example, the form asks for details of the type of technology “to be used” or when the supply/service is “expected to commence”. The applicant should respond with details of the technology being used and the date supply/service commenced. The form also asks for the “projected financial performance of the proposed activities”. In response, the applicant should provide details of the current and projected financial performance.

In relation to existing infrastructure, IPART needs to understand how the infrastructure is actually operating, what specifications it is designed to meet and whether it is meeting them. As a result, IPART expects to be provided (as an Appendix to the licence application) copies of any existing documentation (eg, agreements, plans, policy and procedures) used to manage:

- the operation of the infrastructure (eg, safe and reliable performance, continuity of supply, maintenance, monitoring)
- water quality (eg, fit for purpose, incident and emergency response, monitoring)
- sewage services (eg, health or ecological assessments, arrangements for disposal of waste, monitoring), or
- the retail of the services supplied by the infrastructure (eg, customer complaints, marketing, debt recovery).

Plans

Before commencing commercial operation licensees are normally required to prepare and provide IPART with the following plans where applicable:

- infrastructure operating plans
- water quality plans
- sewage management plans
- retail supply management plans.

However, network operators of existing infrastructure subject to the transitional arrangements, have up to 6 months after the licence has been granted to submit to IPART the infrastructure operating, water quality or sewage management plan (as applicable).

No transitional arrangement applies to the submission of retail supply management plans. Applicants for a retail supplier’s licence are still required to prepare and provide to IPART a copy of a retail supply management plan before carrying out activities under the licence. IPART therefore recommends that the retail supply management plan form part of the licence application in these cases.

Audits

Under the Act, IPART may require audits to be undertaken by an approved auditor in respect to the following:

- in relation to the infrastructure operating plan, the adequacy of the plan and the condition of the infrastructure
- in relation to all other plans, the adequacy of the plan
- licence compliance.

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4 See clause 6 or 13 of Schedule 1 of the Regulation.
5 See clause 7 of Schedule 1 of the Regulation.
6 See clause 14 of Schedule 1 of the Regulation.
7 See clause 8 of Schedule 2 of the Regulation.
8 See clause 33(3) of the Regulation.
9 See clause 8 of Schedule 2 of the Regulation.
10 Clauses 6(3) or 13(3) of Schedule 1 of the Regulation.
11 Clauses 7(5), 14(4) of Schedule 1 and clause 8(3) of Schedule 2 of the Regulation.
12 See Part 8 of the Act.
For existing infrastructure subject to transitional arrangements, IPART considers that the following arrangements should apply:

- A copy of the audit plan (including the detailed scope of work) is to be submitted at the same time the infrastructure operating, water quality or sewage management plans (as applicable) are provided to IPART.

- IPART will normally require the condition of the existing infrastructure and the adequacy of the relevant infrastructure operating plan to be audited at the same time. However, this will be determined by IPART on a case-by-case basis.

- In relation to retail supply management plans, IPART will determine when an audit of the adequacy of the plan should be provided after obtaining a copy of the plan.

- IPART will determine the timing and frequency of compliance audits after reviewing the plans and audit reports.

A copy of the final audit report must be provided to IPART immediately following the completion of the audit.


**Further information**

For general information on the licensing scheme or licence fees, see the relevant Fact Sheets at http://www.ipart.nsw.gov.au/water/private-sector-licensing/fact-sheets.asp.

Please contact IPART’s Utility Licensing team if any further information is required (on the contact details provided).

**Legal context for this Fact Sheet**

IPART has prepared this Fact Sheet as a general summary of relevant parts of:

- **the Act**
  
  *Water Industry Competition Act 2006.*

- **the Regulation**
  
  *Water Industry Competition (General) Regulation 2008.*

This Fact Sheet should not be relied on as a substitute for legal advice, and is designed to be read in conjunction with the above source documents.