

New Water Industry Competition Act – what existing licensees need to know about transition

8 December 2023

Introduction

Key points in this section

- We are moving to a new regulatory framework for the private water industry
- Existing licensees will need to transition to new licensing arrangements
- This fact sheet will tell you what is happening and how to prepare

The purpose of this fact sheet is to explain to existing licensees the transition process so you can plan for the upcoming changes to the *Water Industry Competition Act 2006* (WIC Act).

Substantial changes to the WIC Act will be made once the *Water Industry Competition Amendment Act 2021* and a new *Water Industry Competition (General) Regulation* (WIC Reg) commence. We refer to this as the 'Commencement Date', and to these changes as 'new WICA'.

Once new WICA commences, there will be a 12-month period (the Transition Period).

The key changes during the Transition Period include:

- We will be transitioning existing licences into new licence and approval instruments
- You will be consulted on the new transitioned instruments
- If a scheme you operate involves 'essential infrastructure', a last resort provider will be designated for your scheme
- You will have an opportunity to apply to have your licences varied in relation to maximum scale or classes of infrastructure.

Changes to the regulatory framework

New WICA represents a major transition for the NSW private water industry. Changes to the regulatory framework include:

- a move to state-wide licences and scheme specific approvals
- strengthened customer protections through new last resort provider requirements and a deemed customer contract.

Your licensing arrangements will be changing

Most existing licences will transition to new licences and approvals under new WICA over the Transition Period. During the Transition Period:

- If you will continue to be regulated under new WICA, your existing network operator's licence will be transitioned into an operator licence, scheme approval and operational approval.
- If your scheme is authorised to service more than 30 residents or small businesses (referred to as 'regulated schemes' under new WICA^a), your retail supplier's licence will be transitioned into a retailer licence.
- If your scheme will no longer be regulated under new WICA, your licence will not be transitioned and will cease to have effect at the end of the Transition Period.
 - We will write to you to confirm if your licence will no longer be regulated before the Transition Period commences. Where your scheme will be regulated under the *Local Government Act 1993*^b, we will also notify and work with the relevant local council to handover regulation of your scheme once the Transition Period has ended.

How this fact sheet helps you

It is important to understand the changes and what this means for you as we transition to operating under new WICA.

This document explains:

- What you need to know about the new framework (**Section 0**)
- What is involved in moving to the new framework, including the timeline and steps (**Section 1**)
- What you need to do to prepare for a successful transition (**Section 3**)

1 What you need to know about the new framework

Key points in this section

- We are introducing new licensing instruments that will make licensing more agile and efficient for the private water industry (**Section 1.1**)
- We are also introducing related changes to support the new framework (**Section 1.2**)

^a See definition of 'regulated scheme' in Dictionary, Part 4 of the WIC Amendment Act.

^b Some schemes will require an approval under section 68 of the *Local Government Act 1993*.

1.1 New licensing instruments

The new framework includes new state-wide licences, and scheme-specific approval instruments. These changes will make licensing and regulation more efficient and agile for the private water industry.

Features of the new structure include:

1. Applicants can apply for operator and/or retailer licences without applying for a scheme approval at the same time.
2. Each scheme will have a scheme approval which authorises the registered operator to construct a scheme.
3. The registered operator will need an operational approval to start operating a scheme once it is constructed and commissioned.
4. Each scheme will need a registered retailer to sell the scheme's water or sewerage services.

1.2 Other related changes

Transition to the new framework will mean:

- new last resort provider arrangements and a requirement for contingency plans to be developed by either last resort providers or licensees
- a new deemed customer contract
- new Reporting Manual and Audit Guides that are consistent with the new licence and approval instruments
- new licence and scheme approval application forms and guides
- new application fees and annual licence fees (the new application fees apply from the Commencement Date; annual licence fees commence after the Transition Period).

Before the Transition Period commences, we will notify you and publish on our website the following information in relation to new applications and fees under new WICA:

- licence and scheme application forms and guides
- application fees and annual licence fees
- scales guide
- design capacity guide
- insurance guide.

2 What's involved in moving to a new framework

Key points in this section

- We will transition existing licences to new licence and approval instruments (**Section 2.1**)
 - Depending on your situation, the transition process may take one or two steps (**Section 2.1.2**)
- We will transition licences progressively over the 1-year Transition Period (**Section 2.2**)
 - There is a process in transitioning licences (**Section 2.2.1**)
- We need to make related changes to support the new WICA framework (**Section 0**).

This section will explain the processes involved in moving to the new framework. It will start by explaining the process for transitioning your existing licences into the new instruments, and then explain related processes, such as the designation of last resort providers. We explain what you need to do, when and at what points in the process you will be consulted or may need to provide information or make an application or decision.

2.1 New licence and approval instruments

2.1.1 Retailer and operator licences, scheme and operational approvals

Under the new WICA framework there are two types of licences: retailer and operator. Operator licences will allow a licence holder to construct and operate water industry infrastructure, and retailer licences will allow a licence holder to sell water and sewerage services. Depending on the type of licence, a licence holder will be approved to operate, or retail, anywhere in NSW.

Licences will no longer be scheme-specific, but a licensed operator can only construct or operate schemes they are registered to operate and a licensed retailer can only sell water or sewerage services for schemes they are registered to retail for.

Scheme approvals will allow the registered operator to construct a particular scheme. Once a scheme is constructed and commissioned, the operational approval will allow the registered operator to operate the scheme and the registered retailer to sell the services.

Figure 1 describes key features that must be authorised by each instrument.

Figure 1 What must be authorised in licences and approvals

<p style="text-align: center;">Operator licence</p> <ul style="list-style-type: none"> • Authorised activities • Class or classes of water industry infrastructure authorised by the licence • Maximum number of schemes the licensee is authorised to construct or operate • Maximum scale of the schemes (i.e. number of customers, connections, volumetric limits or otherwise) authorised to construct or operate. 	<p style="text-align: center;">Retailer licence</p> <ul style="list-style-type: none"> • Authorised activities • Maximum scale of the schemes (i.e. number of customers, connections or otherwise) for which the licensee is authorised to act as retailer.
<p style="text-align: center;">Scheme approval</p> <ul style="list-style-type: none"> • Area of operations • Location of the water industry infrastructure (other than reticulation) • Class or classes of water industry infrastructure • Design capacity of water industry infrastructure • Purposes for which the infrastructure is intended to operate • If the scheme is to be constructed in stages, the infrastructure to be authorised in each stage 	<p style="text-align: center;">Operational approval</p> <ul style="list-style-type: none"> • Scheme and scheme approval to which the operational approval applies • Purposes for which the infrastructure is authorised to operate • If the scheme is to be constructed in stages, the stage(s) to which the approval applies

2.1.2 Licence transition may be a 2-step process

Step 1 – largely 'like for like' transition

We will transition your existing licence to a new one on a 'like for like' basis – that is, your new licence and approval will together authorise the same activities as authorised by your existing licence.

However, as part of the step 1 transition we can make some limited modifications. For example, for an approval we may modify the area of operations within the scheme in a non-substantial way, or, with your consent, in a substantial way. This will allow the area of operations to be aligned with current servicing plans (if appropriate). You should consider whether there would be benefit in a substantial modification of the area of operations for your schemes.

As part of the step 1 transition, we can also increase the maximum number of schemes authorised by a licence if we are satisfied that you have the capacity to operate them. We may require information from you in order to assess your capacity.

Step 2 – variations to licences

As your current licences are scheme-specific, the resulting 'like for like' licence may not reflect your current technical, operational and financial capacity to construct and operate a range of classes of infrastructure or infrastructure of a bigger scale.

For example, you may presently be licensed to operate a sewage disposal scheme but also have the capacity to operate schemes which treat sewage to produce recycled water. Your transitioned licence will only authorise the class of infrastructure that relates to constructing and operating sewage disposal schemes. To construct and operate schemes to treat sewage to produce recycled water, you will need to seek a variation to the class of infrastructure in the transitioned licence.

As a result, for some licensees the transition may be a 2-step process:

1. We transition your existing licences to the new licences and approvals on a 'like for like' basis.
2. You apply to vary any licences (as required) to authorise a different maximum scale of schemes or class of infrastructure, as demonstrated by your technical, organisational and financial capacity.

Consultation process

We will give you an opportunity to provide us with comments or feedback on your draft transitioned instruments prior to their finalisation. IPART will determine the transitioned licences and approvals in time for the instruments to be in place by the end of the Transition Period.

Early variation application process

You will have an opportunity to make an early application to vary your licences during the Transition Period. However, IPART will need to wait for your existing licences to be transitioned before seeking public submissions on any variation applications received. IPART will aim to finish assessing early variation applications and to provide its recommendations to the Minister as quickly as possible. This will assist the Minister to determine the variation as soon as possible after the Transition Period.

You will be notified of the applicable application fee for an early variation application once the Transition Period commences.

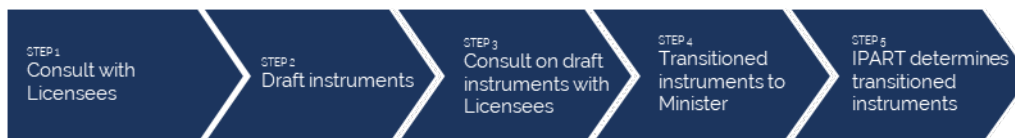
To apply for an early variation you will need to use the new WICA licence application forms which will be available from our website from the Commencement Date. In your application for a variation, you will need to provide evidence of your technical, organisational and financial capacity to increase the maximum scale or add additional classes of infrastructure to be authorised under the varied licence, if approved. We will publish guidance on the level of evidence you need to provide in our new WICA licence application guides. We can also meet with you to discuss the variation requirements before making an application to assist with the process.

You may apply to vary your licences at any time, but this early application process is only available if you wish to vary your licences in relation to either the maximum scale of schemes or classes of infrastructure.

2.2 The licence transition process

The Transition Period provides a 12-month period for us to transition existing licences to the new instruments. We will transition existing licences progressively over the Transition Period so that all licences are transitioned at the end of the Transition Period (see **Figure 2**). We will consult with you on your draft new licences and approvals prior to finalising the instruments.

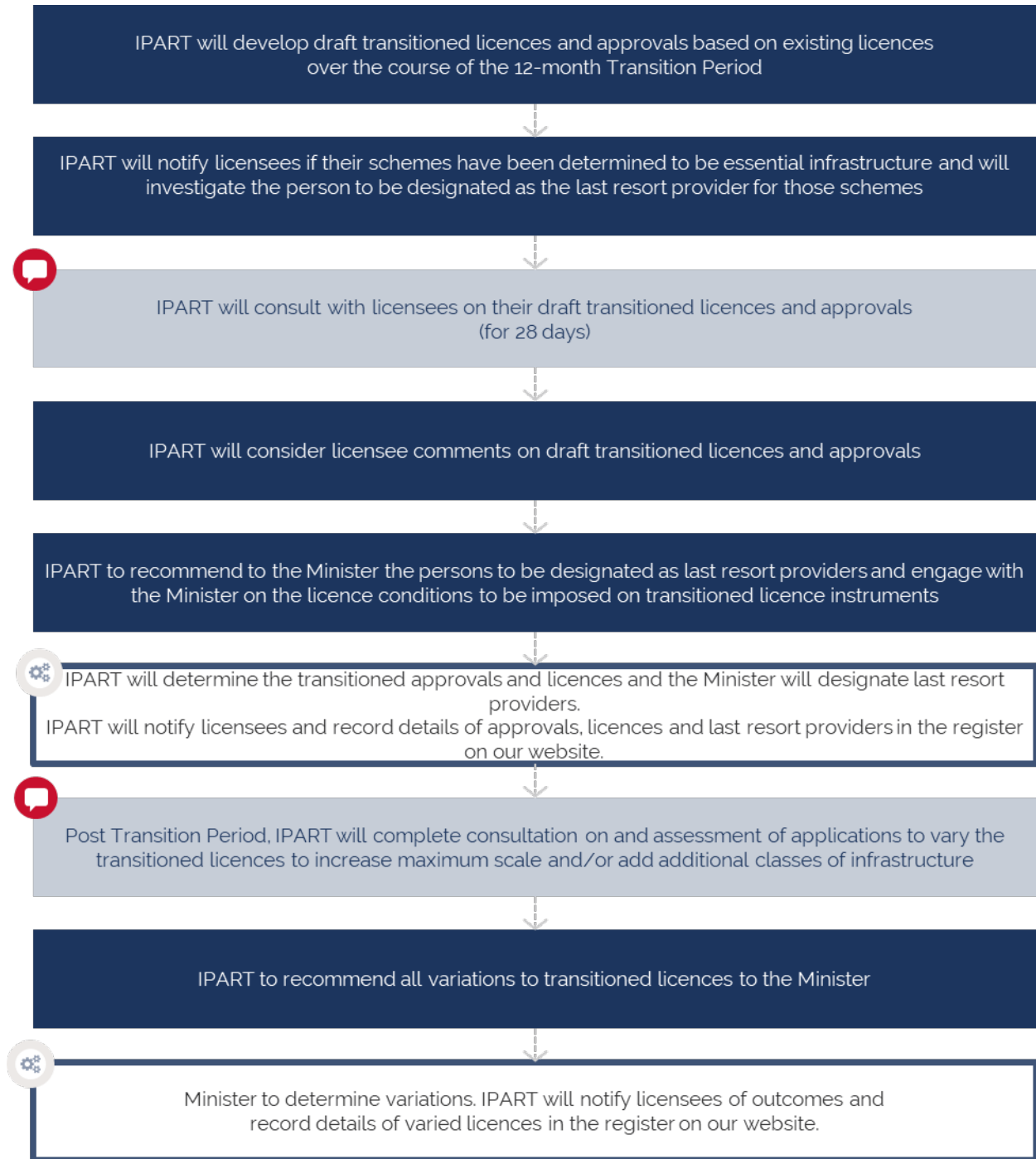
Figure 2 Simplified overview of transition process steps




2.2.1 The licence transition process

Figure 3 below outlines the potentially 2-step process to issue new transitioned instruments and, if necessary, varied licences.

Figure 3 Process to transition existing licences



 Licensee can provide comment at this stage of the transition process

2.3 Other changes to support the new framework

We need to make other changes to support the new WICA framework, as detailed below. We will consult with you directly on these changes.

2.3.2 Contingency plan guide and template

New WICA includes new last resort provider provisions:

- A last resort provider who can step in to provide an essential service should the licensed operator or retailer fail (e.g. because of insolvency)
- Contingency plans to assist the last resort provider to step in to replace the failed operator or retailer in a last resort event.

The Minister will designate last resort providers for all existing schemes that are essential infrastructure, based on our recommendations. We anticipate this will occur during the Transition Period. Once the last resort providers are designated, licensees or last resort providers will need to submit a contingency plan to IPART for approval.

The requirements for contingency plans are to be published in the new WIC Reg. IPART is also planning to develop and consult on a contingency plan guide and template.

Contingency plan process

During the Transition Period we will:

- Notify you in writing as to whether your scheme has been determined to be essential infrastructure.
- Recommend to the Minister the designation of a last resort provider for your transitioning scheme providing essential services.
- Develop, consult and finalise a contingency plan guide and template. We will consult with you, public and local water utilities, technical experts, auditors and DPE in developing this guide and template.

Our timetable for these processes is in Error! Reference source not found.:

Table 1 Last resort providers and contingency plans process

Steps	Process
1	• IPART will provide written notice to licensees of schemes that are essential infrastructure.
2	• IPART will seek expressions of interest from licensees to be last resort providers, if appropriate.
3	• IPART will consult with public water utilities, licensees and other relevant stakeholders on draft contingency plan guide and template.
4	• IPART will finalise investigations and recommendations to the Minister as to last resort providers.
5	• IPART will finalise contingency plan guide and template and publish on website.
6	• Minister will designate last resort providers for all essential infrastructure schemes.
7	• IPART to publish details of last resort providers in the register on our website.
8	• Licensees or last resort providers to submit contingency plans to IPART for approval.

2.3.3 Deemed customer contract

The WIC Amendment Act provides for the new WIC Reg to set out a deemed customer contract to apply to schemes servicing small retail customers (i.e. residential or small business customers) similar to Sydney Water and Hunter Water's standard customer contracts.

2.3.4 New Reporting Manual and Audit Guides

While your existing licences are being transitioned, they remain in force and the old WIC Act (prior to being amended) continues to apply to your existing licences. Once the Transition Period ends, the old WIC Act will cease to apply. In preparation for new WICA being operational, we will develop a new Reporting Manual and Audit Guides to apply after transition.

We will consult with you on these documents. Our process is in **Table 2**:

Table 2 New Reporting Manual and Audit Guides process

Steps	Process
1	<ul style="list-style-type: none"> • IPART to consult with licensees on draft new Reporting Manual and Audit Guides.
2	<ul style="list-style-type: none"> • IPART to finalise and publish new Reporting Manual and Audit Guides.

3 What you need to do

Key points in this section

- Start considering whether you might seek to vary your new licences (**Section 3.1**)
- Take part in our consultations on other changes (**Section 3.2**).

3.1 Consider your new instruments and potential variations

We will contact you at the beginning of the Transition Period with our initial findings in transitioning your existing licences regarding maximum number, maximum scale and classes of infrastructure, area of operations, essential infrastructure and what special or standard conditions may apply. In preparation for transition, you could start considering the following questions:

- What maximum scale or classes of infrastructure are likely to be authorised in your transitioned licences and whether this matches your technical, financial and organisational capacity (i.e., capacity)?
- Whether the current area of operations is appropriate?
- What maximum number of schemes you would like your new licences to authorise that matches your capacity?

3.2 Consider other changes to the framework

Get ready for our consultations on changes including the deemed customer contract, last resort providers and contingency plans, and the new Reporting Manual and Audit Guides.

You can prepare for this consultation by reading the deemed customer contract, contingency planning guide and template, draft Reporting Manual and Audits Guides once these documents become available. You will be notified when they are available.