



NEW SOUTH WALES GOVERNMENT

Water Industry Competition Act 2006 (NSW)

Network operator's licence

Licence no. 12_016

Orica Pty Ltd

(ACN 004 117 828)



New South Wales

Water Industry Competition Act 2006 (NSW)

Section 15

**Notice of Decision -
Variation of Network Operator's
Licence No. 12_016**

I, The Hon. Donald Harwin MLC, Minister for Energy and Utilities, have decided to amend Orica Australia Pty Ltd (**Applicant**)'s (ACN 004 117 828) licence number 12_016 (**Licence**) under section 15 of the *Water Industry Competition Act 2006 (NSW)* (**Act**). The reasons for my decision are set out below.

I have considered and accepted the Independent Pricing and Regulatory Tribunal (**IPART**)'s advice and recommendations in its report to me on the 5-year review of the licence. I attach IPART's report (**Attachment A**).

I have also had regard to the licensing principles set out in section 7 of the Act in considering whether or not to amend the licence conditions and what conditions should be imposed on the Licence.

I attach the Licence, as varied (**Attachment B**).

The Hon. Donald Harwin, MLC
Minister for Energy and Utilities

Dated this 9th day of March 2018

SCHEDULE A – SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

This schedule sets out the licence conditions which the Minister has determined to impose pursuant to section 13(1)(b) of the *Water Industry Competition Act 2006*. In addition to these Ministerially-imposed licence conditions, Licensees are subject to obligations imposed by the Act, the Regulation and the standard Ministerially-imposed licence conditions set out in Schedule B. Licensees are encouraged to obtain independent advice as to the conditions and obligations of their licence. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the Act or the Regulation.

A1 Activities authorised

This Licence authorises the Licensee and the persons specified in Table 1 to construct, operate and maintain the water industry infrastructure specified in Table 2 for the purposes as specified in Table 3 within the area specified in Table 4, subject to the conditions imposed by or under the Act, the Regulation and this Licence.

Table 1 Authorised persons

Not Applicable

Table 2 Specified water industry infrastructure

Infrastructure used for the extraction, treatment, filtration, storage, conveyance or reticulation of non-potable water only from a groundwater source.

Table 3 Authorised purposes

Cooling Tower makeup
Industrial processes

Table 4 Specified area of operations

The City of Botany Bay Local Government Area
--

SCHEDULE B – GENERAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

1. Ongoing capacity to operate

- 1.1. The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART in accordance with the Reporting Manual.

2. Maintaining appropriate insurance

- 2.1. The Licensee must hold insurance that is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.
- 2.2. The Licensee must provide a copy of each certificate of currency of the insurance maintained by the Licensee to IPART in accordance with the Reporting Manual.
- 2.3. [Not applicable]
- 2.4. The Licensee must, within 6 months of the date that this Licence is granted or by a later date specified by IPART (if any), demonstrate that the insurance held is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence, by providing a report to IPART from an Insurance Expert that:
- a) certifies that in the Insurance Expert's opinion, the type, scope and limit of the insurance held by the Licensee is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence; and
 - b) is in the form prescribed by the Reporting Manual.
- 2.5. If, in relation to the activities authorised by this Licence, there is, or is to be, a change in either of the following, the Licensee must provide a report to IPART in accordance with the Reporting Manual:
- a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or
 - b) the type, scope or limit on the amount of insurance held by the Licensee.
- 2.6. From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner and form and within the timeframes specified by IPART, from an Insurance Expert certifying that in the Insurance Expert's opinion the type, scope and limit on the amount of insurance held by the Licensee is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.

[Note: The circumstances in which IPART may request a report under clause 2.6 include (but are not limited to) the following:

- *where IPART considers that there may be a change in the type, scope or limit on the amount of insurance held by the Licensee in relation to activities that the Licensee is carrying out under this Licence;*
- *where there is a change in the type or extent of activities authorised by this Licence; or*
- *where IPART or an approved auditor considers that the type, scope or limit on the amount of insurance held by the Licensee may not be appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.]*

3. Complying with NSW Health requirements

- 3.1. The Licensee must carry out the activities authorised by this Licence in compliance with any requirements of NSW Health that:
- a) IPART has agreed to; and
 - b) are notified from time to time to the Licensee by IPART in writing.

4. Complying with Audit Guidelines

- 4.1. The Licensee must comply with any Audit Guidelines issued by IPART.

5. Reporting in accordance with the Reporting Manual

- 5.1. The Licensee must prepare and submit reports in accordance with the Reporting Manual.

6. Reporting information in relation to the register of licences

- 6.1. The Licensee must notify IPART, and provide IPART with details, of any change in relation to the following, in accordance with the Reporting Manual, within 14 days of the change:
- a) any source from which the water handled by the Specified Water Industry Infrastructure is derived;
 - b) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the Specified Water Industry Infrastructure for the purpose of supplying water to its customers;

- c) any other water infrastructure to which the Specified Water Industry Infrastructure is connected;
- d) in the case of non-potable water, the authorised purposes for that water;
- e) [Not applicable]
- f) [Not applicable]
- g) [Not applicable]

7. Monitoring

- 7.1. The Licensee must undertake any monitoring that is required for the purposes of this Licence, any Plan, the Act or the Regulation in accordance with this clause 7.
- 7.2. The Licensee must keep the following records of any samples taken for monitoring purposes specified in the Water Quality Plan:
 - a) the date on which the sample was taken;
 - b) the time at which the sample was collected;
 - c) the point or location at which the sample was taken; and
 - d) the chain of custody of the sample (if applicable).
- 7.3. The Licensee must ensure that analyses of all samples taken for the purposes of Verification Monitoring are carried out by a laboratory accredited for the specified tests by an independent body that is acceptable to NSW Health, such as the National Association of Testing Authorities or an equivalent body.

8. Delineating responsibilities

- 8.1. If a code of conduct has not been established under clause 25 of the Regulation, the Licensee must, by a date specified by IPART, establish a code of conduct (**Licensee's Code of Conduct**) in accordance with this clause 8.
- 8.2. [Not applicable]
- 8.3. Within 6 months of the date on which this Licence is granted or by a later date specified by IPART (if any), the Licensee's Code of Conduct must be agreed in writing between:
 - a) the Licensee; and
 - b) each licensed network operator, licensed retail supplier and/or public water utility that:
 - i) supplies water or provides sewerage services by means of any water industry infrastructure that is connected to the Specified Water Industry Infrastructure; or

- ii) constructs, maintains or operates any water industry infrastructure that is connected to the Specified Water Industry Infrastructure.

8.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 8.3 by, at a minimum, providing for:

- a) who is responsible for repairing, replacing or maintaining any pipes, pumps, valves, storages or other infrastructure connecting the Specified Water Industry Infrastructure to the other water industry infrastructure;
- b) who is responsible for water quality;
- c) who is liable in the event of the unavailability of water;
- d) who is liable in the event of failure of any water industry infrastructure;
- e) the fees and charges payable in respect of the use of the water industry infrastructure; and
- f) who is responsible for handling customer complaints.

8.5. The Licensee must not contravene the Licensee's Code of Conduct to the extent that it makes the Licensee responsible or liable for the matters set out in it.

9. Notification of changes to end-use

9.1. If the Licensee proposes to operate the Specified Water Industry Infrastructure to supply non-potable water for an end-use which is not set out in the most recent Water Quality Plan provided to IPART, the Licensee must notify IPART in writing at least 3 months before commencing such operation.

10. Notification of commercial operation

10.1. Each time the Licensee has brought any new Specified Water Industry Infrastructure into commercial operation, the Licensee must:

- a) notify IPART in accordance with the Reporting Manual that it has brought the relevant Specified Water Industry Infrastructure into commercial operation; and
- b) provide such notification within 10 days after it has brought the relevant Specified Water Industry Infrastructure into commercial operation.

11. Notification of non-compliant Plumbing

11.1. If the Licensee becomes aware that a customer's Plumbing is not Code Compliant, the Licensee must, within 10 days, notify the customer and the Plumbing Regulator, in writing, of that fact.

SCHEDULE C – INTERPRETATION AND DEFINITIONS

1. Interpretation

1.1. In this Licence, unless the context requires otherwise:

- a) the singular includes the plural and vice versa;
- b) headings are used for convenience only and do not affect the interpretation of this Licence;
- c) a reference to a document includes the document as modified from time to time and any document replacing it;
- d) a reference to a "person" includes a natural person and any body or entity whether incorporated or not;
- e) a reference to a clause is to a clause in this Licence;
- f) a reference to a section is to a section in this Licence;
- g) a reference to a schedule is to a schedule to this Licence;
- h) a reference to a law or statute includes regulations, rules, codes and other instruments under it, and consolidations, amendments, re-enactments or replacements of them; and
- i) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

2. Definitions

2.1. Expressions used in this Licence that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

2.2. In this Licence:

Act means the Water Industry Competition Act 2006 (NSW).

Audit Guidelines means an authorised purpose listed in Table 3 of Schedule A

Authorised Person means the Authorised Persons specified in Table 1 of Schedule A

Authorised Purpose means an authorised purpose listed in Table 3 of Schedule A

Code Compliant	has the meaning given to that term under section 7 of the <i>Plumbing and Drainage Act 2011</i> (NSW).
Insurance Expert	means an insurance broker which holds an Australian financial services licence under Part 7.6 of the <i>Corporations Act 2001</i> (Cth) that authorises the broker to provide financial product advice for, and deal in, contracts of insurance within the meaning of Chapter 7 of that Act.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means this network operator's licence granted under section 10 of the Act.
Licensee	means Orica Pty Ltd (ACN 004 117 828)
Licensee's Code of Conduct	has the meaning given in Schedule B, clause 8.1.
Minister	means the Minister responsible for Part 2 of the Act.
NSW Health	means the Water Unit of NSW Ministry of Health and any of the local health districts as defined by the NSW Ministry of Health.
Plan	means any infrastructure operating plan, water quality plan or sewage management plan that the Licensee is required to prepare under the Regulation.

Plumbing	means any pipe, fitting or apparatus that is situated: <ul style="list-style-type: none"> a) downstream of the customer's connection point to a water main, where the water main is Specified Water Industry Infrastructure; b) upstream of a customer's connection point to a sewer main, where the sewer main is Specified Water Industry Infrastructure; or c) upstream of a customer's connection point to a stormwater drain, where the stormwater drain is Specified Water Industry Infrastructure.
Plumbing Regulator	has the meaning given to that term under section 3 of the <i>Plumbing and Drainage Act 2011</i> (NSW).
Regulation	means the Water Industry Competition (General) Regulation 2008 (NSW).
Reporting Manual	means the document titled "Network Operator's Reporting Manual", which is prepared by IPART and is available on IPART's website at www.ipart.nsw.gov.au .
Specified Area of Operations	means the area of operations specified in Table 4 of Schedule A
Specified Water Industry Infrastructure	means the water industry infrastructure specified in Table 2, Schedule A
Verification Monitoring	means verification monitoring as described in the document titled " <i>Australian Drinking Water Guidelines</i> " or the document titled " <i>Australian Guidelines for Water Recycling</i> " as the case may be.
Water Quality Plan	means the water quality plan that the Licensee is required to prepare under the Regulation.