

Insurance Guide

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This is a guide for *Water Industry Competition Act 2006* (WIC Act) scheme approval or licence applicants and licensees on how to make and maintain appropriate insurance arrangements.

1 Overview

This guide covers how to:

- use this guide
- make appropriate insurance arrangements - including business description, risk assessment, types of insurance, limits of insurance and insurers
- provide information or reports from insurance brokers or experts in licence or approval applications
- maintain appropriate insurance - including annual certification and periodic auditing.

1.1 Who is this guide for?

This guide is for:

- anyone applying for a licence or scheme approval under the WIC Act
- WIC Act licensees subject to a licence condition to maintain appropriate insurance
- insurance brokers or experts providing advice to an applicant or licensee on insurance arrangements.

1.2 Why do you need this guide?

We ask licence applicants to demonstrate both of the following:

- what insurance arrangements are or will be in place
- why these arrangements are or will be appropriate to the size and nature of the activities to be carried out under the licence.

The Minister may impose a licence condition under sections 8H(2)(b) and 8I(2)(b) of the WIC Act to require a licensee to hold insurance appropriate to the size and nature of the activities being carried out under the licence, taking into account all the water industry infrastructure constructed or operated, or all the retail services provided, under the licence. IPART generally recommends that the Minister impose such a condition.

We also ask applicants for scheme approvals to demonstrate that there will be an appropriate level of insurance in place to cover the new scheme.

Appropriate insurance is important to protect the long-term interests of WIC Act scheme customers, as it helps to safeguard a licensee's capacity to supply water or sewerage services. Industrial special risks, public and products liability, workers compensation and other insurance policies may enable licensees to recover from adverse events or meet any reasonable claims against them without compromising their business.

2 Guide to appropriate insurance arrangements

2.1 How to use this guide

An applicant or licensee should refer to this Guide when making an application or maintaining appropriate insurance arrangements. Applicants and licensees should also provide this Guide to the insurance broker or expert who is assisting them to identify or put appropriate insurance arrangements in place. Applicants and licensees are asked to provide information or a report from an insurance broker or expert to demonstrate that their insurance arrangements are or will be appropriate.^a

This Guide explains what we consider to be appropriate insurance arrangements. It also explains when and how to get information or a report from an insurance broker or expert.

2.2 Making appropriate insurance arrangements

We consider **appropriate insurance arrangements** to be arrangements that are **appropriate for the size and nature of the activities being undertaken and the risks arising from those activities**.

To make appropriate insurance arrangements, a licensee should do all of the following:

- clearly identify the activities proposed to be or being undertaken under the licence
- identify and analyse the key risks arising from the activities
- consider what types of insurance policies will cover the activities and associated risks, and what activities or risks are uninsurable or will remain uninsured
- consider what insurance limits and terms are appropriate for the size and nature of the activities and associated risks
- obtain insurance from an appropriate insurer that is appropriate for the size and nature of the activities and associated risks.

This Guide discusses each of these aspects in further detail below.

^a As requested by our *WIC Act Scheme Approval Form* and *WIC Act Licence Application Form*, or if required under a condition imposed on the licence.

2.2.1 Business description

It is important to properly identify the business activities and ensure that the description of these activities accurately captures the extent of the applicant's scheme or the licensee's activities under the licence. This would assist to ensure schemes are covered by, and licensees are provided with, insurance policies that appropriately cover the activities being undertaken.

Box 1 Business description

If the activities include supplying potable, recycled water and non-potable water services and collecting different source water (such as stormwater and sewage) this should be clear in the activity description of your insurance policies. For example, the activity could be described as:

The design, construction, maintenance and operation of sewerage infrastructure; the design, construction, maintenance and operation of drinking water, stormwater, recycled and non-potable water infrastructure; the supply of water (potable, recycled and non-potable) services, sewage and stormwater collection services and sewerage services to residential, business and industrial customers and connections.

2.2.2 Risk assessment

To properly identify and analyse the risks arising from the business activities, it is recommended that the applicant or licensee:

- use an approach consistent with the *AS/NZS ISO 31000-2018 (Risk Management – Guidelines)*, as published by the International Organisation for Standardization and as updated or amended from time to time
- have regard to the preliminary risk assessment developed for the scheme in the case of a scheme approval applicant or the most up-to-date 'risk register' kept to identify the key risks in the case of a licence applicant or licensee
- consider all business risks, whether insurable or not. Risks could include risks from planning/design activities, construction risks to health and the environment, poor workmanship, operational risks to the environment, health or safety, climate risks or other business risks.

The applicant or licensee should identify the key risks, the correlating types and levels of insurance required, and any uninsured or residual risks, and provide this information or report to us. The assistance of an insurance broker or expert may be needed to do so. See the section on 'Providing information or reports from insurance broker or experts' for more details.

2.2.3 Types of insurance

The applicant or licensee should have insurance to cover the scheme or the business activities and associated risks during 2 distinct phases – the **design and construction** phase and the **operational phase**.

It is the responsibility of the applicant or licensee to determine the types of insurance appropriate to cover the scheme or the business activities and associated risks during these 2 phases. Other types of insurance may also be necessary.

Design and construction

As a guide, we generally look for the following types of insurance for the design and construction phase:

- **Construction material damage** – to cover losses to the construction site
- **Public liability** – to cover injury or loss to persons
- **Professional indemnity** – to cover planning or design activities and the provision of any other professional services or advice
- **Contractor's pollution liability** – to cover any pollution created from construction activities
- **Workers' compensation** – to cover any injury or loss to employees, as required by statute.

Operational

As a guide, we generally look for the following types of insurance for the operational phase:

- Property or Industrial Special Risk (ISR) – to cover material damage to the assets once operating (e.g. storm damage to a plant)
- Public and products liability – to cover injury or loss to persons, including from the product (e.g. potable or non-potable water)
- Professional indemnity – to cover the provision of professional services or advice, if relevant
- Environmental Impairment Liability (EIL) – to cover clean-up costs and other liabilities arising from pollution
- Workers' compensation – to cover any injury or loss to employees, as required by statute.

2.2.4 Level of insurance

It is not possible to set generic levels of insurance, as the appropriate level will vary depending on the particular activities being undertaken and the associated risks, the scale of those activities and whether the insurance is to cover related or parent company activities as well.

As a result, it is only possible to provide the following **general guidance** in this area:

- We consider limits of less than \$10million are **not** appropriate for professional indemnity or public and products liability insurance.

- The limit for Construction material damage insurance should be the value of the build plus any additional expenses including, but not limited to, demolition and architects.
- The limit for Property / Industrial Special Risk insurance should be the replacement cost to rebuild at today's dollar cost, plus any additional expenses including, but not limited to, demolition, architects and tankering or alternative arrangements needed to maintain services during the rebuild.
- The limit for Environmental Impairment Liability insurance should match the pollution potential identified in the risk assessment.

2.2.5 Insurers

We recommend that all insurers providing policies to applicants or licensees have a recognised credit rating of A- or better.

2.3 Providing information or reports from insurance brokers or experts

2.3.1 Information or reports to be provided at the application stage

The following outlines what should be provided at the application stage.

At the licence application stage

An applicant for a licence should provide with its application a letter or report from an insurance broker or expert to support its explanation on the appropriate level of insurance cover for the activities it is proposing to undertake under the licence. The letter or report should demonstrate why the type, scope and limit of insurance obtained or proposed to be obtained is appropriate for the size and nature of the proposed construction and operation or retail services to be undertaken under the licence. The explanation should show how the proposed insurance appropriately covers the risks identified in the applicant's risk register.

At the scheme approval application stage

An applicant for a scheme approval should provide with its application a letter or report from an insurance broker or expert to support its explanation on the appropriate level of insurance cover for the scheme. The letter or report should demonstrate why the type, scope and limit of insurance obtained or proposed to be obtained is appropriate for the size and nature of the proposed scheme. The explanation should show how the proposed insurance appropriately covers the risks identified in the applicant's preliminary risk assessment for the scheme.

2.3.2 Reports to be provided at the operational stage

The following information or reports should be provided once a scheme will begin, or has begun, operations.

At the operational approval application stage

A licensee who is the registered operator for a scheme is required to provide a report from an insurance broker or expert where a licence condition has been imposed to maintain appropriate insurance. The condition requires this report to be provided before commencing to commercially operate new scheme infrastructure under an operational approval granted by IPART.

The licensee will need to provide this insurance broker or expert report to IPART prior to or at the same time as the operational approval application is made in order for IPART to be satisfied that the scheme infrastructure is capable of operating in compliance with the conditions of the licence (section 7D(1)(d) WIC Act). IPART must be satisfied of this in order to grant the operational approval.

The report should demonstrate why the type, scope and limit of insurance obtained or proposed to be obtained is appropriate for the size and nature of the proposed construction and operation activities to be undertaken under the licence. The report should take into account all the water industry infrastructure being constructed or operated by the registered licensed operator including the new scheme. The explanation should show how the proposed insurance appropriately covers the risks identified in the licensee's most up-to-date risk register, which includes the new scheme.

If a report (instead of a letter) was provided and accepted by us at the licence or scheme approval application stage, we may accept this report in satisfaction of this licence condition as long as the licensee can demonstrate that the same insurance is in place prior to commencing operation (this can be demonstrated by providing the current Certificates of Currency). For example, it may not be necessary to adjust insurances for a new scheme that is of a size and nature that is already covered by existing insurances.

From time to time

Under the licence condition, a licensee can also be required to provide an insurance expert's report to us from time to time, when requested in writing by IPART.

2.4 How to provide the report

2.4.1 At application stage

Our [WICA Licence Application Form](#) and [WICA Scheme Approval Form](#) available from our website sets out the information an applicant must provide in relation to its proposed insurance arrangements. Applicants should provide a letter or report from an insurance broker or expert in support of their proposed arrangements.

If a report is to be provided, it should comply with our [insurance expert's report template](#) available on our website (see further information below).

2.4.2 When commencing commercial operation

Licensees are usually subject to a licence condition to report in accordance with our [Reporting Manual](#) (available from our website). The Report Manual sets out a prescribed form or template for the insurance expert's report to be provided by a licensee. In accordance with that template, the insurance expert must do the following:

- set out the type and level of insurance obtained by the licensee in relation to the licensed activities
- certify in their opinion that the type and level of insurance obtained by the licensee is appropriate for the size and nature of the licensed activities
- and set out the reasons as to why the licensee's insurance arrangements are appropriate.

Full details of the information to be provided in the report can be accessed from our [Insurance experts report template](#).

3 Maintaining appropriate insurance

3.1 Annual certification

Once licensed, a licensee is usually subject to a requirement to file an annual compliance report with us. This is due no later than 1 September each year. As part of the annual compliance report, we require each licensee to declare that it has maintained insurance that is appropriate for the size and nature of the activities authorised under its licence. The annual statement must:

- be in the form prescribed in the [Reporting Manual](#)
- be signed on behalf of the licensee corporation
- attach a copy of the current Certificates of Currency for all relevant insurance policies held
- include a description of any relevant changes in insurance coverage and provide the reasons for the change, as set out in the [Reporting Manual](#).

3.2 Periodic audits

We will periodically audit the licence conditions relating to maintaining appropriate insurance as part of our risk-based auditing program. We may require an insurance expert's report to be submitted and for copies of policy schedules and policy wording to be made available to us as part of the audit process (for example, if there is not a recent report to have regard to). We may audit this aspect of the licence with assistance from icare (Insurance and Care NSW) or another consultant.