IPART
New South Wales

Independent Pricing and Regulatory Tribunal

Review of the *Water Industry Competition Act 2006* and regulatory arrangements for water recycling under the *Local Government Act 1993*

IPART submission on the discussion paper

Water — Submission
February 2013

The Tribunal members for this submission are:

Dr Peter J Boxall AO, Chairman

Mr James Cox PSM, Chief Executive Officer and Full Time Member

Mr Simon Draper, Part Time Member

Inquiries regarding this document should be directed to a staff member:

Gary Drysdale	(02) 9290 8477
Kaye Power	(02) 9113 7753
Narelle Berry	(02) 9113 7722

Independent Pricing and Regulatory Tribunal of New South Wales
PO Box Q290, QVB Post Office NSW 1230
Level 8, 1 Market Street, Sydney NSW 2000

T (02) 9290 8400 F (02) 9290 2061

www.ipart.nsw.gov.au

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1 Introduction

The Independent Pricing and Regulatory Tribunal (IPART) welcomes the opportunity to respond to the Department of Finance and Services (DFS) paper "Urban Water Regulation Review – Discussion Paper Joint review of the *Water Industry Competition Act 2006* and regulatory arrangements for water recycling under the *Local Government Act 1993*" (discussion paper).

The discussion paper canvases a broad range of risks and issues associated with the current approach to regulating both private and non-metropolitan water recycling schemes in NSW.

In response to this discussion paper, the Government proposes to develop options for reform and present new legislation to the NSW Parliament by mid-year (2013). We note that the review has an ambitious timetable and we expect that there will need to be a staged approach – with development of an initial broad legislative framework and subsequent aspects of policy refined over time.

It will be important that there are mechanisms in place to maintain stability and certainty for the water recycling schemes already licensed under the existing legislative frameworks while the program of change is being implemented.

In particular, we provide commentary on what we consider to be the priority issues in administering the existing regulatory framework and propose a direction for reform in the licensing of schemes under the *Water Industry Competition Act 2006* (WIC Act). This area relates most closely to our functions.

A copy of our submission to this review has been made available on our website.

1.1 Limitations of the review

The discussion paper notes that the review will not address or consider

- regulation of recycling in single households or dual-occupancy dwellings
- regulation of metropolitan water utilities (Sydney Water and Hunter Water)
- regulation of local water utilities other than for recycled water schemes
- wider issues relating to policies such as the BASIX scheme administered by the Department of Planning and Infrastructure

- water sensitive urban design requirements in environmental planning instruments and
- new regulatory requirements relating to drinking water management plans being developed by NSW Ministry of Health to implement the *Public Health Act 2010*.

The discussion paper limits the review of the *Local Government Act 1993* (LG Act) to the licensing of recycled water schemes. The WIC Act review covers the licensing of recycled water, drinking water and sewerage schemes. Given the difference in the scopes of the 2 reviews, we consider that any proposed changes to the existing regimes to address the regulation of recycled water schemes, should also be considered in the wider context of the scope of the WIC Act (for drinking water and sewerage schemes). That is, any proposed option should be considered for its applicability not only to regulating recycled water schemes, but also drinking water and sewerage schemes.

We also have some reservations in excluding consideration of how metropolitan water utilities are regulated, particularly if one of the objectives of the review is to ensure that the regulatory framework is appropriately consistent between public and private entities. We have made an assessment of our proposed direction for reform in the context of how metropolitan water utilities are currently regulated and the possibility of moving all water utilities into the same framework.

Further, we note the objectives of the review do not include encouraging competition, though several of the objectives could be argued to lead to improved competition. While we agree that the protection of public health and the environment is a principal objective of the WIC Act licensing function, we disagree with the view that encouraging competition is not an ultimate objective of the licensing function. Competition within the water industry should be encouraged as it enhances dynamic efficiency and innovation and has a historic context. This view is supported by the record for the development of WIC Act (see Box 1.1 below).

We consider that by approaching the review of the WIC Act licencing function with a focus on protecting public health and the environment, the discussion paper has neglected to consider whether the options also encourage competition and the barriers that may be hindering competition. This approach has also meant that the current inefficiencies we experience in administering the WIC Act, which we have outlined above, may not be considered in the correct context of both encouraging competition while protecting public health and the environment. Our submission has been prepared in the context of both of these objectives.

Box 1.1 Objectives of the WIC Act and its licensing functions

While there is no overarching "objective clause" to the WIC Act, the long title can be used as an aid to the construction of an Act. The long title of the WIC Act states that it is an Act to

- encourage competition in relation to the supply of water and the provision of sewerage services
- facilitate the development of infrastructure for the production and reticulation of recycled water.

The WIC Act also sets out the licensing principles (section 7) the Minister must have regard to when considering whether or not to grant a licence. Regard can also be had to these principles in determining the scope of the licensing regime.

In considering whether or not a licence is to be granted under this Part and what conditions are to be imposed, regard is to be had to the following principles

a) the protection of public health, the environment, public safety and consumers generally

b) the encouragement of competition in the supply of water and the provision of sewerage services

c) the ensuring of sustainability of water resources

d) the promotion of production and use of recycled water

e) the promotion of policies set out in any prescribed water policy document

f) the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence

g) the promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security."

For example, the consultation paper on creating a dynamic and competitive metropolitan water industry (the white paper that preceded the development of the WIC Act) states that the overarching objective of the reform was to promote competition in the water industry.[1].

Both the 2006 and 2010 Metropolitan Water Plans[2] outline the establishment of the WIC Act Regulatory framework as a mechanism to increase competition and innovative service delivery in the water industry.

Similarly, the Hansard record of the second reading of the Water Industry Competition Bill states that the core purpose of the reform is to encourage competition and promote innovative new sources of water—particularly recycling.

1 Consultation paper: Creating a dynamic and competitive metropolitan water industry, Water for Life, May 2006, p1.

2 2006 Metropolitan Water Plan. Water for Life, April 2006.
2010 Metropolitan Water Plan. Water for Life, August 2010.

1.2 IPART's relevant functions

IPART administer the licensing of water industry infrastructure schemes in NSW captured under the WIC Act. We also have a role in arbitration, access undertakings and pricing in the WIC Act. Our functions under the WIC Act include

- making recommendations to the Minister on licence applications
- monitoring and reporting on licensees' compliance with its obligations
- reviewing the WIC Act licences every 5 years
- arbitrating access and sewer mining disputes
- reviewing pricing policies and undertaking pricing determinations for monopoly suppliers, when requested
- reviewing and approving access undertakings.

The WIC Act and policy development are administered by the DFS.

We are also responsible for reviewing and making recommendations to the Minister with regards to the operating licences of the major public water utilities: Sydney Water Corporation, Hunter Water Corporation, Sydney Catchment Authority, and State Water Corporation. We also monitor and report on the public water utilities' compliance with their respective operating licences, and undertake the pricing determinations for the utilities listed above as well as other water utilities (Gosford City Council, Wyong Shire Council, and Essential Water).

Finally we have a role in investigating and reporting competitive neutrality complaints.[3]

1.3 Our submission

This submission provides our comments in response to the discussion paper with a focus on the licensing functions under the WIC Act.

In accordance with the NSW Better Regulatory Office's (BRO) better regulation principles, our response to the discussion paper focuses on what we consider to be the significant issues with the existing regulatory frameworks. We also propose a future direction for reform of the licensing of water industry utilities under the WIC Act. This area relates most closely to our functions.

Our suggested direction for reform was developed using the draft guidance on the process for designing and reviewing licensing schemes.[4] The guidance has

3 *Independent Pricing and Regulatory Tribunal Act 1992* Part 4C.

4 PWC, *A best practice approach to designing and reviewing licensing schemes guidance material*, draft, October 2012.

been developed as part of our red tape reduction review of licence design in NSW, for the NSW Government and the BRO.

In developing the suggested reforms we have considered all the steps outlined in the guidance document and applied them conceptually to the development of the proposed reforms. However, due to time constraints each step has not been fully articulated in our submission.

Our comments on the proposed changes are contained in the following sections

- Section 2: What issues are there with the current regulatory approach?
- Section 3: What could be done better?
- Section 4: Specific considerations

2 What issues are there with the current regulatory approach?

The discussion paper identifies a very broad range of risks and issues to recycled water schemes currently regulated by the WIC Act or the LG Act. In doing so, the discussion paper poses over 100 questions for consideration in the review.

Given the number and complexity of the risks and issues canvased by the discussion paper, we consider that it is important to prioritise these issues so that the options or suite of options that will be considered are targeted to address the issues of greatest consequence. This approach is consistent with principles 1[5] and 4[6] of the better regulation principles.

We consider that the priority issues and risks that should be the focus of the review are

- the complexity and extent of the existing legislation for regulating recycled water schemes and water utilities
- the knowledge and resourcing of both government and the industry to efficiently work within the regulatory framework
- the cost burden of complying with and administering the legislative requirements
- the facilitation of competitive entry of private companies into the water industry, specifically the barriers to entry for proponents of new schemes and new entrants.

In this section, for each of the priority risks and issues, we discuss the answers to the following questions

- what is the problem to be solved?
- how big is the problem and how severe are its consequences?[7]

We have provided detailed commentary only on those risks and issues we consider have had the greatest (most adverse) impact on the objectives of the WIC Act, based on our experiences of administering licences under that Act. We consider that these same risks and issues have also been significant in impacting schemes regulated under the LG Act.

5 Principle 1: The need for government action should be established.
6 Principle 4: Government action should be effective and proportional.
7 Better Regulation Office, Guide to better regulation 2009.

A discussion of the risks and issues of less consequence, including our response to all questions raised in the discussion paper, is attached in appendix A.

2.1 The problems

2.1.1 Complexity of the existing system

As illustrated in Table 2 of the discussion paper (pages 26 and 27), the existing framework for regulating water industry infrastructure in NSW is extensive, though not comprehensive.[8]

The coverage of these various regulations encompasses all options: product, people and place.[9] For example, the proposed sources of recycled water (industrial process, sewage, greywater, and stormwater), the end uses (irrigation, process water, and toilet flushing), the varying proponents (single household, multi-dwelling, commercial, industrial, local council, and water utility) and finally the location of the proposed infrastructure, will all have a bearing on which legislation regulates a scheme. This makes identifying the applicable legislative requirements complex for proponents and regulators alike.

Adding to this complexity is that the approaches to regulating the schemes can differ quite significantly under the various Acts. We note that there are currently more than 6 different regulatory frameworks under which water industry infrastructure is directly regulated. This number increases significantly when the regulation of specific aspects of a scheme is also considered (eg, environmental or health risks). The following illustrate some of the differences between only 2 of the many regulatory frameworks for water industry infrastructure.

Recycled water scheme regulated under the WIC Act

- are regulated by targeted legislation with specific objectives, compliance requirements and penalties
- have plans for the operation of the infrastructure consistent with the Australian Guideline for Water Recycling (AGWR)
- are regularly audited for compliance based on a risk based approach
- are required to have validated critical control points in the process, which are consistent with AGWR
- are assessed and monitored by a central regulator (IPART).

Recycled water schemes regulated under section 68 of the LG Act

8 There are some recycled water and stormwater schemes that are able to operate in the absence of any regulatory oversight (eg, schemes operated by local councils within the operational area of Sydney Water Corporation).

9 PWC, *A best practice approach to designing and reviewing licensing schemes conceptual framework*, draft, October 2012, page 34.

- are regulated by legislation originally intended to manage onsite sewage management facilities with the objectives, compliance requirements, and penalties commensurate with the risks associated with onsite systems
- may use the Interim NSW Guidelines for the Management of Private Recycled Water Schemes which prescribe some requirements of the AGWR
- generally are not subject to audit requirements (there are a small number of exceptions where councils have required that a scheme be audited once)
- generally do not require validation consistent with the AGWR
- are assessed (and sometimes monitored) by the relevant local council (there are more than 100 councils across regional NSW and more than 40 in metropolitan Sydney).

Further, under the current arrangements, not all water industry infrastructure is regulated under either the WIC Act, or the LG Act. This means some schemes have been able to reach operational stage in the absence of any direct regulatory oversight. For example, local councils within the Sydney Water or Hunter Water areas of operation are exempt from requiring approval to construct, operate or maintain water industry infrastructure from both of the pieces of legislation described above.

2.1.2 Administrative knowledge and resources

Since 2006, the assessment of recycled water schemes has seen a significant shift from the application of traditional prescriptive requirements to risk-based assessment processes.

This shift has been largely driven by the development of the AGWR and the Australian Drinking Water Guidelines (ADWG). It also reflects the diverse range of sources, end uses, and technologies, which have evolved within the water industry in response to drought and the need to improve the sustainability of our water supplies.

While the risk-based approach is more flexible, it requires some interpretation specific to each situation. As a result, the move to a risk-based approach has placed increasing importance on the knowledge of both the proponents and regulators of schemes in understanding the risks posed by schemes to end-users and the environment. Proponents and regulators alike are required to interpret the risks in order to apply an appropriate level of control and regulatory oversight respectively.

As discussed above, the responsibility for the administration of schemes under different legislation is spread amongst a large number of agencies, departments and councils. There is an expectation that all regulatory agencies will have the appropriate expertise to assess the environmental and health risks of a diverse range of schemes to ensure that the regulation of the scheme is adequate and

proportional. This expectation is difficult to meet particularly where the regulatory function is decentralised.

For example, many councils do have not a large number of schemes within their areas of responsibility. As each scheme can be unique, maintaining appropriately skilled approval officers is not cost-effective for the council. As a result, some approval bodies lack the resources, knowledge, and skills to apply the risk-based assessment process.

Similarly, the knowledge and skills of proponents of schemes can vary significantly. Currently, the WIC Act licensees include major industrial manufacturers, multi-national water treatment companies, property developers, and small-scale start-up businesses.

Local government recycled water schemes in regional NSW are often managed by experienced operators, whereas metropolitan council staff is unlikely to have any experience with water industry infrastructure.

Where a scheme proponent lacks the necessary knowledge and skills, they often engage a water industry contractor to operate and maintain the scheme. This provides another layer of administration between the regulator and the end-user, which can result in communication difficulties, and a lack of understanding of regulatory responsibilities.

The varied backgrounds of scheme proponents results in significant variation in the content and quality of information they are able to provide. This presents further difficulties for regulators and administrators who are tasked with consistently and fairly assessing the risks associated with each scheme.

This problem is highlighted in question 100 of the discussion paper, where the government seeks feedback on "what is the best way to allocate and administer regulatory responsibility?" One option being that a consolidated regulatory framework is developed.

2.1.3 The cost of the regulatory regime

The components of the framework for regulating water industry infrastructure in NSW bring with them various costs for scheme proponents, regulators and administrators.

For scheme proponents, the costs of gaining and maintaining approval to operate schemes vary depending on the regulatory regime. Under the WIC Act, proponents are required to pay an annual licensing fee, costs of the audit of the management plans, ongoing compliance audit costs, and costs for reporting. Additionally, recycled water schemes may require expensive validation depending on the technology used. The WIC Act licensees with multiple

schemes are required to pay these costs multiple times. Costs increase again where the scheme proponent is both the retail supplier and network operator.

Schemes regulated under section 68 of the LG Act have costs set and imposed by local councils, and differ across councils. These costs may include an annual fee, but, the lesser regulatory requirements are likely to result in a total compliance cost significantly less than for WIC Act schemes.

Regulators and administrators incur differing costs due to the differing requirements of the relevant legislation. Our WIC Act compliance activities, including processing applications, organising audits, and annual reporting, now requires more resources than regulating the 4 major NSW public water utilities (Sydney Water, Hunter Water, Sydney Catchment Authority, and State Water). This is due to the increasing number of licences and applications, and the complexity of addressing the principles and requirements in the WIC Act. The major water utilities have operating licences which are audited annually and reviewed every 5 years. We do not approve the specific pieces of infrastructure of these organisations.

2.1.4 Barriers to entry

The Discussion paper raises the question[10] of whether the WIC Act has operated to encourage competition in the supply of water and sewerage services, or facilitated the development of the infrastructure for recycled water.

The WIC Act is a first step towards greater competition. It provides a regulatory framework that allows private participation into the NSW water industry. To date, it has supported the development of 5 recycled water schemes.

These schemes include dual pipe recycled water systems to residential and commercial developments (ie, Pitt Town, Bingara Gorge) and sewer mining projects in office blocks (ie, Bligh Street, Darling Walk). One large-scale recycled water project (the Camellia Recycled Water Scheme) supplies commercial and irrigation customers with recycled water. We are currently processing another 5 applications (including Discovery Point and Barangaroo) and are aware of a number of other dual pipe recycled water systems that are likely to seek licences in the near future.

However, there are some barriers to competition, including specific provisions of the WIC Act, aspects of the current structure of the incumbents' prices, and features of the market.

Key examples of current barriers to entry include the following.

[10] Question 2 pg3.

- The structure of licences where a proponent needs to have a new licence, or a variation to their current licence for each new scheme they develop, imposes unwarranted costs to new schemes.
- The requirement for proponents to obtain sufficient quantities of water otherwise than from a public water utility.[11] In particular, this is a barrier to licensees seeking a retail supplier's licence for the supply of water. In general, the development of new supplies is more costly per unit than the cost of supply from an existing source. This source is not equally available to incumbents and new entrants.
- The definition of "infrastructure services" excludes water filtration. This means that access seekers cannot use the WIC Act to negotiate access to these services. Water filtration is an inseparable component of the Sydney Water supply network and duplication is uneconomical.
- The WIC Act requires us to consider current price determinations, including the maintenance of postage stamp pricing, when considering an access undertaking or arbitrating a dispute.[12] This is a considerable constraint on the arbitrator's capacity to deliver decisions that meet the objects of part 3 of the WIC Act.
- The determination of a common or postage stamp price for the services of the public water utilities distorts competition. It means that even where a new entrant can match the public water utilities' actual cost of supply to a region, the prices charged to end consumers can still be higher. This is because the postage stamp prices reflect the utility's average costs, and not the cost of supplying to that region. This creates inefficiencies and distorts the market.
- Developers of most land serviced by Sydney Water and Hunter Water currently incur no developer charges. By contrast, the developers of land serviced by WIC Act licensees must agree with the licensee on how to share the full cost of the water service supply.
- The recent amendment of the WIC Act which resulted in the inclusion of the licensing principle, promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.[13] This principle could result in customers being required to pay for infrastructure that they are not accessing. The principle should be removed from the WIC Act.

New entrants report that they face difficulty in attracting sufficient capital for new schemes due to market perceptions of higher risks in the formative years of competition. In addition, new entrants do not enjoy the same economies of scale as incumbents.

11 *Water Industry Competition Act 2006* section 10(4)(d).
12 *Water Industry Competition Act 2006* section 41(3).
13 *Water Industry Competition Act 2006* section 7(1)(g).

Ideally, the WIC Act needs to be designed to facilitate the entry of private companies into the water industry and not provide additional barriers.

2.2 The consequences

The problems discussed above in the areas of complexity, administrative burden, costs, and barriers to entry, highlight the major inconsistencies between the various components of the different regulatory frameworks. These inconsistencies all have consequences.

- Scheme proponents are faced with uncertainty over which regulatory regime their scheme will fall under. This results in delays and increased costs, which in turn, can often affect the viability of a scheme going ahead. Additional delays and costs result if a proponent applies for a licence under the wrong regulatory framework.
- Scheme proponents are frequently unable to identify which approvals are required, unless they seek extensive advice from various regulators. We understand from stakeholder consultation that this confusion leads to difficulty in preparing an application for approval. This can result in numerous additional requests for information from the approval body, which in turn can delay the approval of a scheme.
- These issues can have flow on effects for larger projects, as a recycled water scheme may be a requirement of the development approval for a project. This places regulators in a difficult position, as their requirements can potentially de-rail or slow down a major infrastructure project.
- Inconsistency in regulation between schemes of a similar risk profile may create an incentive for proponents of schemes to "shop" the regulation. Proponents may manipulate the design of the schemes so that they fall under the regulatory regime with the least burden, which may result in inappropriate public health and environmental outcomes.
- The uncertainty and potential high cost of scheme entry in NSW may deter technology providers from entering the market. Developers wishing to incorporate recycled water schemes into their developments may have a smaller and less competitive market to draw from.
- The full potential for competition within the water industry may not be realised because of unnecessary barriers to entry and because the WIC Act is not specifically designed to facilitate entry of private companies into the water industry.

All these consequences highlight that the current framework for regulating water industry infrastructure in NSW is not effectively achieving the 3 major objectives for reform of recycled water management. The current inconsistency between the various components of the framework results in inadequate protection of

public health and the environment, and discourages competition within the water industry.

3 What could be done better?

This section presents our suggested direction for reform of the regulatory framework. Our suggested direction focuses on a revised licensing approach, which can be applied to all water industry infrastructure.

As outlined in section 1, in developing our proposal and submission, we have applied the relevant principles of better regulation and have considered and largely followed the process outlined in stage 2[14] of the draft PWC paper on "A best practice approach to designing and reviewing licensing schemes – DRAFT guidance material" (PWC guidelines). This paper was developed as part of our review of licensing in NSW.[15] We consider that the process is a sound basis for guiding the development of a licensing approach.

By applying the principles and process steps we consider we have developed a robust alternative to the licensing approach in the current regulatory framework.

Our licensing approach proposes to change the coverage of the existing WIC Act to license a water utility rather than the present arrangements where the individual schemes are licensed. The approach also integrates elements of the existing WIC Act licensing regime with other legislative requirements. It also looks at centralising the approvals process. This will minimise duplicative red tape and consolidate the licensing requirements so that the most appropriate regulatory framework is used to address a specific risk. Flexibility within the proposed approach will ensure that the licensing and approval requirements are proportional to the risks.

3.1 Objective of reform

In this section we consider the following questions

- what are the objectives of licensing?
- do the objectives relate to the problems which we are trying to address?

14 Stage 2 asks if the licensing is well designed and outlines the steps for designing a licensing approach.

15 These guidelines are still draft and have not been endorsed by the Tribunal for use at this point in time.

To identify what we could do better we first need to understand the objective or objective(s) of doing "things better". Not all the objectives are complementary, meaning that the balance of two competing objectives will also need to be considered.

Licensing is only well suited to addressing a limited range of market problems or regulatory objectives. The draft PWC guidelines outlines those objectives that can be achieved by licensing and notes that: *if the policy objective being sought do not relate to one of those listed, then licensing would not be able to address the policy objective and should not be considered as a potential option*.[16]

We have reviewed the list of objectives and consider the objectives outlined in Table 3.1 to reflect the overall objectives of licensing water industry infrastructure.

Table 3.1 Objectives relevant to licensing water industry infrastructure

Objectives	Description
To manage or protect common resources	To manage the use of common resources or ensure that private actions do not unduly damage common resources (eg, environmental systems, heritage)
To promote competence, quality or safety	To promote standards of competence, quality or safety, or reduce the likely consequences of poor standards.
To improve market competition	To promote competition within markets or to overcome a lack of competition where competitive markets are not feasible (eg, for natural monopolies).
To facilitate the provision of public goods	To create the market conditions necessary to ensure public goods are sufficiently provided.

Source: Table 2, PWC, *A best practice approach to designing and reviewing licensing schemes – DRAFT guidance material*, page 22.

To improve market competition within the water industry in NSW while protecting public health and the environment and facilitating the provision of public goods, the licensing approach needs to

- be comparable across the public and private water industry sectors
- ensure that the licence is targeted to the true driver of risk or the problem trying to be addressed
- ensure that the obligations are proportionate to the risks
- consider the least-cost approach to achieving the objectives.

16 PWC, A best practice approach to designing and reviewing licensing schemes conceptual framework, draft, October 2012, page 22.

3.2 Proposed licensing approach

In response to the priority issues identified above, and consistent with the overall objectives of licensing water industry infrastructure, we have proposed a new licensing approach.

In doing this we have considered the following questions.

- Is there an opportunity to consolidate licensing requirements?
  - Does our proposal fit with existing regulatory requirements? Or can existing regulation be amended to achieve the objectives?
  - Does our proposal make other regulatory requirements obsolete which can now be repealed?
- Is the proposed regulation proportional to the risks/issues that it addresses?
  - Does our proposal reflect the significance of the problem to be addressed and the availability of resources?
- Is the coverage for the licence framework the minimum necessary?
- Have the interaction with existing regulatory schemes, the type and structure of the industry involved (including existing institutional structures), the need for flexibility or certainty in the regulatory approach and the potential burdens associated with implementation and compliance been considered?

3.2.1 Overview of proposed licensing approach

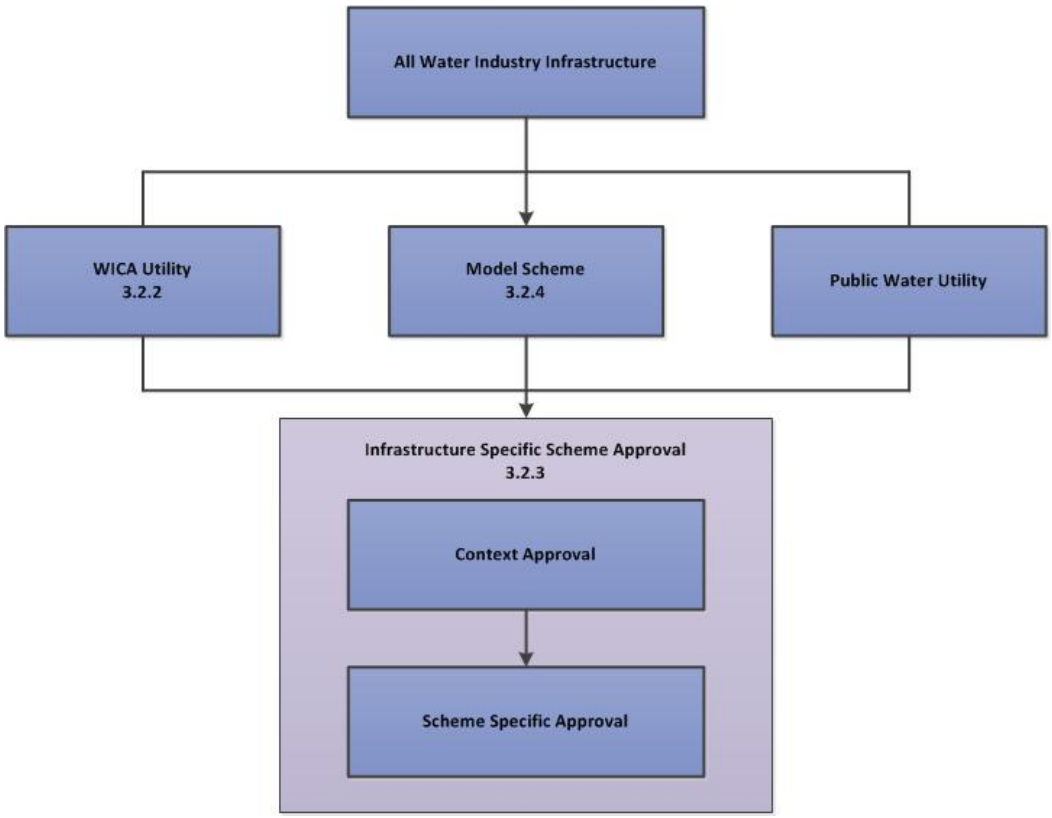
Under our proposed licensing approach all water industry infrastructure would need to be constructed, operated and maintained by either a WIC Act utility (see section 3.2.2) or a public water utility, unless the infrastructure fits a prescribed model approval (see section 3.2.4).

There are three points of approval outlined in this approach. These approvals represent the most efficient points of coverage to properly target the true driver of the risk, or problem trying to be addressed. By targeting these points we are able to

- consolidate legislative requirements (and remove duplication) with the aim of making the legislation framework less complex and reducing red tape
- reduce administrative costs for both regulators and licensees
- ensure that skilled resources are allocated more efficiently
- ensure the regulatory obligations are proportionate to the risks they address
- better align the objectives of reform with the approval.

These benefits are explained in more detail in the following sections. The broad outline of the framework is presented in Figure 3.1.

Figure 3.1 Proposed licensing approach



3.2.2 WIC Act utility

The specific objectives of licensing a private water utility are to promote a standard of competence and improve market competition. In order to meet these objectives the most efficient point of coverage is licensing the "person" who will operate, maintain and construct the infrastructure.

Given the above objectives, the principles outlined in the WIC Act and the criteria used for determining a licensing application should reflect those objectives. In designing the proposed licensing approach we have considered the principles and criteria used for determining a WIC Act licence.[17]

We propose that to meet the objectives for licensing a water utility we would need to consider

- whether the applicant has, and will continue to have, the technical, financial and organisational capacity to carry out the activities that the licence would authorise
- whether an applicant is "fit and proper" and not a disqualified corporation

17 *Water Industry Competition Act 2006* s.(7) and (10).

- whether the applicant has made, and will continue to maintain, appropriate arrangements with respect to insurance
- whether the objective of encouraging competition in the supply of water and the provision of sewerage services has been met, or would be met, by granting a licence.

However, as articulated later, we consider that other licensing criteria should be amended, considered at another point of approval, or removed altogether.

A WIC Act utility licence could cover one or all types of infrastructure (potable water, sewerage, and non-potable water) and/or retail functions, as was deemed appropriate for the applicants' demonstrated level of competence.[18]

A WIC Act utility licence could retain many of the current WIC Act licence conditions such as

- maintaining the necessary competence (technical, organisation and financial capacity)
- the requirement to obtain and maintain appropriate insurance
- the delineation of responsibilities for interconnection with other utilities' infrastructure
- the requirement to notify us of changes in the organisation.

We also propose to replace the existing requirement for a proponent to prepare plans for the relevant scheme with an obligation for a WIC Act utility to develop and implement relevant management systems, such as an asset management system, environmental management system, and systems consistent with the frameworks outlined in the AGWR and the ADWG. This approach is consistent with the metropolitan public water utility requirements and represents a least-cost approach where utilities undertake more than one scheme.

We propose to undertake operational audits on a risk-based approach and a 5-yearly review of the licence. The scope of the audit would be determined with consideration of the risks of the utility and the specific schemes. The audit would also incorporate site visits of specific schemes run by the licenced utility. The requirements for ongoing compliance would be clearly identified using the compliance /audit framework already developed for WIC Act licence holders and public water utilities.

Our proposed licensing approach would result in a significant reduction in the current costs for the applicant, us, and other agencies with a mandatory referral role. The reduction in licensing principles to be considered would also lead to a

[18] Note some thought could go into the use of retail and network only licence holders as each maybe capable of different functions e.g. retail for customer protection and other activities. This may generate 2 areas of competition those providing network only and those providing retail only.

reduction in the number of agencies and agency resources involved. More specifically we have identified the following benefits.

- The proposed licensing approach is comparable with the large metropolitan water utilities' licences. This leads to greater consistency between public and private utilities, and removes some of the regulatory inconsistencies which inhibit competition with the major metropolitan and local water utilities.
- Many agencies' involvement would be more appropriate at the scheme-specific approval stage with consultation targeted at this stage depending on the type of proposed scheme.
- There would be a reduction in the number of WICA licenses granted as several schemes can be operated by the 1 licence holder.
- There would be a significant reduction in the annual auditing function for us and licenced utilities (where they operate more than one scheme). We have provided a comparison of the auditing, compliance and reporting requirements for 1 licence holder under the current licensing program compared to the proposed licensing framework in Appendix C.

3.2.3 Infrastructure specific scheme approval

Context approval

The objective of approving the "context" of a scheme[19] is to manage and protect a common resource (ie, the environment). In order to meet this objective, the most efficient point of coverage is approving the "scheme".

The objectives of the existing planning approval processes align well with the objectives of the scheme specific approval. As such, our proposed approach is to incorporate the context approval in the development approval (DA) framework. It is important to note that NSW Planning is undertaking a review of the planning system,[20] which includes a review of the current DA process. Consideration will need to be given to how this approval will integrate into the proposed planning changes and to ensure all water industry infrastructure is captured by the new planning approval process.

Approval at this stage of a scheme's development also recognises that proponents of schemes will not have developed specific detailed plans of the infrastructure, ready for auditing and approval, as part of a current WIC Act licence application. These plans will generally be prepared post development approval when detailed design occurs. However, to ensure the infrastructure is appropriate for the site, a context approval process still needs to occur at a stage

19 By context we mean, is it the right place for the proposed specific scheme and is the right person undertaking the proposed activity?

20 NSW Government. A New Planning System for NSW Green Paper, July 2012

where the appropriate regulatory agencies, such as local government and the Department of Planning, can provide input.

At this stage the appropriate regulatory authorities could determine if other principles, such as the sustainability of the water resources and the promotion and production of recycled water,[21] are being met and that it is in keeping with the planning requirements of the local council. Context approval is likely to occur sometime prior to construction of the water infrastructure and could be years before the scheme-specific approval is required or granted.

Scheme-specific approval

The objective of a scheme-specific approval is to promote quality and safety (to protect public health and the environment) and to facilitate the provision of a public good. In order to meet this objective, the most efficient point of coverage is the product.

To ensure the protection of public health and the environment, *all* recycled water, sewage management, and potable water schemes require some regulatory oversight. However, the approach should be proportional to the risk associated with the scheme, and the potential public health and environmental impacts.

Regulation of individual schemes could be addressed through a flexible, risk-based approvals process. To ensure consistency between public and private entities, it should be applicable to WIC Act utilities and smaller public water utilities, the specific subject of this review. If appropriate it could be applied to the large metropolitan utilities. Consideration would need to be made to the requirements of their current operating licences to ensure there is no duplication in regulatory or auditing requirements.

It should also be developed with enough flexibility to ensure the requirements for approval placed on a scheme are proportional to the risk.

The approvals process could use the process already developed under the WIC Act audit framework (eg. the audit of management plans for adequacy followed by an audit of infrastructure before operation of the scheme can commence).

There are 2 options for the approvals process each with advantages and disadvantages.

Preferred option

Our preferred option involves a 1-stage approval process, where infrastructure is constructed on the basis that a WIC Act utility or a public water utility would have the technical, organisational, and financial capacity to undertake the work. The approval would be granted before operation of the scheme commences.

21 *Water Industry Competition Act 2006* s (7)(1)(c) and (d).

The approvals process would need to assess the capacity of the infrastructure to operate safely (to protect public health and the environment), and in accordance with the management systems. Elements of the management systems specific to a scheme would also be assessed as part of the approval. For example, scheme-specific elements of a management system, developed in accordance with the AGWR, might include

- risk assessment for the scheme
- flow diagram of the scheme including critical control points (CCP)
- treatment technology that is being used
- monitoring process
  - validation
  - verification
  - operation
  - ongoing auditing
- incident and emergency notification processes.

The risk of allowing construction without the prior auditing of the management systems is that infrastructure will be designed and installed which is not capable of protecting public health or the environment. This would result in the infrastructure having to be redesigned or altered before the Minister grants approval to operate. However, it is difficult to have specific elements of the systems completed to a stage where they could be considered adequate before construction commences (eg, validation).

Our experience with the current WIC Act process has shown that the greatest area of financial risk to proponents is with the installation of inappropriate technology or disposal process. To address this, in the current WIC Act process, we have proposed including a voluntary technology (recycled water or drinking water treatment processes) or sustainability assessment (sewerage disposal scheme). This process could remain, and be further enhanced, by including an education program for proponents and including the ability to undertake informal discussion with regulators before construction commences.

Alternative option

The alternative option involves a 2-stage approval process where the technology (recycled water or drinking water treatment processes) or sustainability assessment (sewerage disposal scheme) stage becomes a mandatory first-stage approval.

This would reduce the risk of incorrect infrastructure being installed, but would increase the work load and cost for both the regulator and proponent. We anticipate that as WIC Act licenced utilities become more experienced, the risk will be significantly reduced, reducing the need for a formal 2-stage process.

3.2.4 Model scheme approval

Under the framework presented in Figure 3. 1, the construction, maintenance and operation of water industry infrastructure that fits into a model scheme approval would not have to be carried out by a WIC Act utility or a public water utility. The approval process could be as simple as notifying an appropriate approval authority of the existence of the scheme, or a more formal approval process such as a check list of requirements/conditions that must be met by the proponent.

The main principle for the development of a model scheme approval is that the scheme should present a low-risk to public health and the environment.

The key objectives of the model scheme approval would be

- that it cannot be manipulated such that a scheme can be made to fit a model
- it must be prescriptive allowing the approval to be delegated to a council without impacting on the consistency of requirements for approval.

Examples of infrastructure that would fit within a model scheme approval can be defined by the current exemption regime outline in the WIC Act, and infrastructure adequately covered in other legislation such as on-site waste water management for systems with <10 equivalent persons. Some further examples are outlined in Box 3.1.

3.2.5 Centralised approvals process

In section 6.6 of the discussion paper, the idea of a centralised approval model verses a decentralised approvals model is raised. Question 100 asks, what is the best way to allocate and administer regulatory responsibilities?

While it is the Government's decision to allocate roles and responsibilities to departments, we consider that a consolidated regulatory framework would provide the best allocation of resources. It will also improve consistency in the application of the framework to both public utilities and WIC Act utilities.

Our proposed licensing approach does not specifically allocate responsibility apart from indicating that we should retain our role of administering WIC Act and metropolitan public water utility licences.

The greatest point of inconsistency in the current regulatory framework is at the scheme-specific approval stage. The policy aspects of this process should be centralised. This would include developing the model scheme approval processes. Food regulation in NSW provides a suitable precedence for this. Approval models for low-risk environments are developed and approval and compliance is delegated to local councils for implementation, with support, education and training provided centrally by the Food Authority.

While it is possible to centralise the proposed licensing approach into one organisation, it is more important to have each approval step coordinated by a nominated department.

Box 3.1 Examples of Infrastructure which would fit within a model scheme approval

Water infrastructure that is used solely for the purpose of stormwater drainage.

Water industry infrastructure that is located on land on which a single residence or dual occupancy is located, and is used solely for supplying water or providing a sewerage service to the residence.

Water industry infrastructure that is owned by a customer of a water utility or retail supplier to whom water or sewerage services are supplied, and the infrastructure is used to reticulate water or provide sewerage services to a tenant. It does not involve further treatment of the water or sewage. Further, the water or sewerage service is supplied at a cost that represents no more than the cost of supplying the water or sewerage service, and the cost of operating and maintaining the infrastructure.

Water infrastructure that is owned by a customer of a public water utility or licensed retail supplier, to whom water is supplied solely to be heated or chilled so that the customer may, in turn, provide heating and cooling services to its customers. The water is not further treated.

Water infrastructure that is used for the production, treatment, filtration, storage, conveyance, or reticulation of water sourced only from roof water, if the water is supplied for a non-potable use and the water is supplied without charge.

4 Other key reform issues

The first 3 sections of the submission addressed the limitations of the current review, how we intend to respond to the discussion paper, the existing significant problems and their consequences, and our proposed licensing model. Section 4 addresses a number of other key issues and changes to the WIC Act that we consider would improve the administrative efficiency and the effectiveness of the WIC Act in meeting its objectives. We have outlined specific legislative changes to the WIC Act and other legislation in Appendix B.

4.1 WIC Act access regime

One of our functions under the WIC Act is the administration of access undertakings.[22]

Question 15 of the discussion paper requests factors which contribute to the lack of take-up of third party access to water infrastructure. We now have experience of the provisions of the WIC Act access to infrastructure services with the analysis of Sydney Water's undertaking.[23] As a result of this experience, we recommend that the exclusion of water filtration services from the definition of infrastructure service[24] should be deleted.

The exclusion is a barrier to entry as the services are an inseparable part of the transport of water in the Sydney network from the Sydney Catchment Authority's storages to an access seeker's customers. Further, it would not be economically feasible to duplicate the infrastructure. For further information on our reasoning, see section 5.1 of Sydney Water's third party access undertaking for water network services, Water – Preliminary View, July 2012.

4.2 Water security charges

Question 3 of the discussion paper asks about the continued validity behind the policy intent of section 10(4)(d). We understand that the policy intent is to ensure that new licensees contribute to the Government's water security objective, and to ensure that competitive entry creates strong incentives for dynamic efficiency rather than simply for the re-sale of pre-existing production.

We suggest that section 10(4)(d) is no longer required as

22 *Water industry Competition Act* 2006 s. 38.

23 Access Undertaking by Sydney Water Corporation in favour of Independent Pricing and Regulatory Tribunal, 20 January 2012.

24 Definition of the Act, ***infrastructure service*** ….(b) does not include: (i) the filtering, treating or processing of water or sewage".

- through the Metropolitan Water Plan and changing climatic conditions, water supplies are now more secure than when the legislation was enacted in 2006
- it is our observation that this licensing principle is largely redundant. This is because to date, WIC Act licence applicants readily demonstrate dynamic efficiency and focus on the opportunity to create a competitive sewerage and recycling industry, rather than supplying drinking water.

Given this, we consider that the costs of section 10(4)(d) of the WIC Act significantly outweigh its potential benefits. The cost of this section acts as a further potential barrier to competition. It imposes costs on new entrants not necessarily borne by incumbents as they have no limitations on their use of existing cheaper unit price supplies, such as dam water, and it creates uncertainty about how much alternative supply is adequate.

We consider that the section should be removed as the policy intent of the section is no longer valid, and it creates unwarranted barriers to entry.

4.3 Promotion of equitable sharing in drinking water infrastructure costs

Recently, the WIC Act was amended to include a new licensing principle, "*the promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security*".[25]

This principle was included to allow the costs of large pieces of infrastructure to be shared amongst participants in the market. However, this new principle could result in customers being required to pay for infrastructure that they are not accessing. Where it is considered appropriate to recovery water security costs, we consider that this would be better facilitated by including these costs within an access arrangement. This approach would avoid double counting by a utility.

We consider that the principle should be removed from the WIC Act as it distorts the market and introduces an additional barrier to competition.

4.4 Management plans

The current WIC Regulation requires the licence holder to develop water quality plans, which are then audited. To be able to audit whether a scheme is consistent with the 12 elements of the framework within the AGWR or the ADWG, it is not necessary to have a plan. Adopting AGWR and ADWG does not require a specific management plan to be developed. Auditing the processes and systems in place for the scheme can easily address this requirement.

25 *Water Industry Competition Act 2006* s. 7(1)(g).

Appendices

A IPART's response to questions in the discussion paper

	Issues/Background	Questions raised in MWD Discussion Paper	IPART's response/ comments
1	Part 2 of WIC Act does not explicitly state its objective. The objective can be inferred from in section 7. By contrast, Part 3 does explicitly state the objective of the access regime under WIC Act.	Should the WIC Act be amended to set out more specific objectives than currently? If so, what should these specific objectives be?	Part 3 of the WIC Act has an explicit objects clause. Section 21 states that the object of the access regime is to promote 'the economically efficient use and operation of, and investment in, significant water industry infrastructure, thereby promoting effective competition in upstream or downstream markets'. We continue to support this objective. We consider that an explicit object clause for the licensing regime should also be developed. This could be the following: "The licensing regime should support competition in relation to the supply of water (potable and non-potable) and the provision of sewerage services in a manner that protects public health and safety, the environment and consumers."
2		Do you consider that the WIC Act to date has operated to encourage competition in the supply of water and sewerage services, or facilitated the development of infrastructure for recycled water? Please provide details.	The WIC Act is a first step towards greater competition within the NSW water industry. It provides a regulatory framework that allows private participation in the NSW water industry. To date it has encouraged/ supported the development of 6 recycled water schemes. These schemes have primarily involved dual pipe systems to residential and commercial developments (i.e. Pitt Town, Bingara Gorge) or sewer mining projects in office blocks (i.e. Bligh Street, Darling Walk). One large scale recycled water project (the Camellia Recycled Water Scheme) supplies commercial and irrigation customers with recycled water. We are currently processing another 5 applications (i.e. Darling

			Quarter and Barangaroo) and are aware of a number of other dual pipe systems that are likely to seek licences in the near future. However, there are still some barriers to competition, some of which would involve changes in Government policy. These barriers include some specific provisions of the WIC Act, aspects of the current structure of the incumbents' prices, and features of the market. Key examples of current barriers to entry include: ▼ The development of licences such that a new entrant needs to have a new licence, or a variation to their current licence, for each new scheme they develop. This imposes unwarranted costs to new entrants. We recommend removal of this barrier through legislative amendment and our proposed approach. ▼ Section 10(4)(d) which requires new entrants to obtain sufficient qualities of water otherwise than from a public water utility. In general, the development of new supplies is more costly per unit than the cost of supply from an existing source which is not equally available to incumbents and new entrants. We recommend removal of this barrier through legislative amendment. ▼ The definition of infrastructure services excludes water filtration meaning that access seekers cannot use the WIC Act to negotiate access to these services. Water filtration is an inseparable component of the Sydney Water supply network and uneconomic to duplicate. We recommend removal of this

			barrier through legislative amendment. ▼ Section 41(3) is a considerable constraint on the arbitrator's capacity to deliver decisions that meet the objects of part 3 of the WIC Act. This section requires IPART to consider current price determinations, including the maintenance of postage stamp pricing, when considering an access undertaking, or arbitrating a dispute. ▼ Developers of most land serviced by Sydney Water and Hunter Water currently incur a developer charge of zero. By contrast, the developers of land serviced by WIC Act licensees must reach agreement with the licensee on how to share the full cost of water service provision. This is a considerable barrier to entry. The consequential inefficiencies and distortions are assessed in IPART's submission to the Green Paper Planning review. In that document, we recommend the introduction of a simplified approach to developer charges for Hunter Water and Sydney Water. ▼ The determination of a common or postage stamp price for the services of the public water utilities distorts competition. It means that even where a new entrant can match the public water utilities' actual cost of supply to a region, the prices charged to end consumers can still be higher. Postage stamp prices reflect utilities' average costs and not the cost of that region. This creates inefficiencies and distorts the market. ▼ New entrants report that they face difficulty in attracting sufficient capital for new schemes due to market perceptions of higher risks in the formative years of competition. New

			entrants do not enjoy the same economies of scale as new entrants.
3	Section 10(4)(d) of WIC Act indicates that licensees must obtain water from a source other than a public water utility. This allows the possibility for future scheme holders to supply water obtained from a private supplier. It does not promote competition for the provision of water industry services (by investing in new water sources).	Is the policy intent behind section 10(4)(d) still valid? Please cite the reasons for your view and – if applicable – provide specific examples.	IPART understands that the policy intent of section 10(4)(d) is to ensure that new licensees contribute to the Government's water security objective, and to ensure that competitive entry creates strong incentives for dynamic efficiency rather than simply the resale of pre-existing production. We suggest that section 10(4)(d) is no longer required as ▼ through the Metropolitan Water Plan and changing climatic conditions, water supplies are now more secure that when the legislation was enacted in 2006 ▼ it is our observation that this section is largely redundant. This is because to date WIC Act licence applicants readily demonstrate dynamic efficiency and focus on the opportunity to create a competitive sewerage and recycling industry, rather than the potable water market. Given this, we consider that the costs of section10(4)(d) significantly outweigh its potential benefits. The cost of this section is its role as further potential barrier to competition, in that ▼ it imposes costs to new entrants which are not necessarily borne by incumbents, as incumbents have no limitations on their use of existing cheaper unit price supplies, such as dam water. ▼ it creates uncertainty about how much alternative supply is adequate.

			We consider that section 10(4)(d) should be removed as the policy intent of the section is no longer valid, and it creates unwarranted barriers to entry.
4		If you consider that section 10(4)(d) is still valid, are any specific changes required to give effect to that policy intent as the market evolves?	See above comments.
5		If changes are required, what alternative models should be considered and what benefits could they provide	See above comments.
6	The majority of new entrants into the water industry are small-scale, niche operators that do not pose direct challenges to the market power of monopolisers.	Is the WIC Act regulatory regime sufficient to enable private sector entry into the market, or are there still too many regulatory barriers?	The WIC Act demonstrates that some components of water supply are potentially competitive (bulk water treatment, the provision of bulk recycled water and retail/ network services in greenfield and/or urban infill sites). In NSW, the WIC Act provides the framework for new market entrants to deliver these services in innovative ways. The current WIC Act licensing regime is focused on licensing persons for specified schemes, rather than licensing private water utilities that may conduct a number of schemes. The regime is particularly suited to regulating large-scale high-risk schemes. The licensing regime also provides a regulated structure that ensures that small-scale high-risk schemes are appropriately assessed, prior to operation, and subjected to ongoing monitoring, once completed. In light of the above, the more important issue is whether the regulatory regime can be improved to

			deliver more efficient outcomes, not only for developers but for the industry, government and community at large. We consider that the current licensing regime could be improved. We are proposing a licensing model where private water utilities are licensed instead of individual schemes. This approach is more comparable with the licencing framework currently applied to the large public water utilities. For full details please see section 3.2.1 of the paper With a few notable exceptions, private industry participation has been more focused on supplying recycled water to high rise buildings (i.e. for cooling towers and toilet flushing), and constructing dual pipeline systems in housing/ commercial developments located on the fringe of urban development (Bingara Gorge, Pitt Town) or large urban infill development (Central Park, Barangaroo). Further, our dealings with the market suggest that more schemes of these types are likely to seek WIC Act licences in the next few years. This will be due to the market maturing and developers becoming more aware of the benefits of decentralised systems.
7		If there are still barriers present, please describe the specific nature of the barriers and provide actual examples if possible.	See question 2.
8		If you believe that there are barriers present, can these barriers be reduced or removed by legislative, policy or regulatory changes?	Some of the barriers highlighted in question 2 could be addressed by changes to regulatory/ legislative requirements. Principally, the Government could take the following actions ▼ remove section10(4)(d) requirement as discussed in question 3

			▼ reduce the level of regulation for low risk projects as discussed in question 9 ▼ introduce a simpler form of developer charges, and a framework for contestability, as described in IPART's response to Green Paper Planning Review. Any structural changes to government owned utilities to promote competition, or any changes to government postage pricing policies, would need to be based on a careful examination of the costs and benefits of such changes to customers, and the efficiency benefits for the community.
9		Are there specific access arrangements, or other terms of the WIC Act regulatory framework, that discourage private sector entry or constrain the financial viability of new entrants? Please provide specific examples.	The current process for obtaining a WIC Act licence for a small company undertaking a small-scale low-risk scheme is complex and expensive. The alternate licensing approach which IPART proposes would allow some schemes to be approved under a prescribed model which has requirements more commensurate to the level of risks.
10	Section 5 of WIC Act is very broad and creates an unnecessarily comprehensive licensing regime. It requires all licensees constructing, maintaining or operating water industry infrastructure and/or providing retail supply services using water industry infrastructure to hold a licence, unless explicitly made exempt under the Act. As a result, a wide range of schemes have applied, or are soon to apply, for a WIC Act licence.	What types of water and wastewater infrastructure schemes should be regulated under the WIC Act and what schemes should be exempt?	All infrastructure should be required to be constructed, operated and maintained by a licence holder unless it fits a model. Businesses establishing themselves as private water utilities should be licensed by the WIC Act. All private schemes should be undertaken by appropriately qualified and experienced personnel. For large-scale and /or high-risk private projects, this work should be undertaken by a WIC Act licensee. However, any low-risk scheme that can be fit into a model and given prescriptive requirements should be excluded from being required to be carried out by an either

			a WIC Act utility or public water utility.
11		How should this be achieved? (For example, should section 5 of the Act be amended, or should further changes be made to the exemptions clauses in the General Regulation?)	See IPART's proposed licensing approach presented in section 3 of the paper.
12		How can self-supply schemes be best defined?	Under the proposed licensing approach it would not be necessary to define "self-supply". Only infrastructure which is able to fit a model would be exempt from requiring either a WIC Act licence holder or a public water utility from undertaking the work.
13	Some self-supply schemes are regulated under other legislation including the *Local Government Act 1993*. Not all self-supply schemes are exempted under WIC Act. If they were, the local councils may not have adequate resources to regulate high risk schemes.	Should schemes that operate for self-supply purposes be licensed under the WIC Act? a. What alternate approaches should be considered?	The WIC Act should not duplicate other legislation where there is sufficient regulatory protection for public health and safety, and the environment. We would support an examination of the Working *Health and Safety Act 2011*, and any other legislation, to ensure duplication is avoided with the WIC Act. If IPART's proposed approach is not accepted, exempting all self-supply schemes from the WIC Act may lead to unintended consequences for some schemes. It may incentivise owners to undertake water and sewerage services themselves, even though it may be more appropriate, for reasons of public health protection, to engage a suitably qualified and licenced operator, particularly for high risk applications.
14	Infrastructure owned by government agencies is not exempt from being licensed under WIC Act. This is not consistent with the logic where infrastructure owned by public water	What approach should the WIC Act take to water industry infrastructure owned and operated by government agencies	Under IPART's proposed approach, if the infrastructure does not fit a model then it should be carried out by a WIC Act licensee or public water utility. This may require a WIC Act licensee

	utilities is exempt.		to take over the running of the scheme, or it may require the government organisation to obtain a licence themselves. If there is sufficient flexibility in the scheme approval process, licences can be tailored to allow an organisation to undertake running 1 scheme only.
15	The network infrastructure access regime established by WIC Act has not yet been utilised by new entrants to the water industry. WIC Act establishes the access regime to enable third party retail suppliers to access water industry infrastructure to provide services. This is to promote competition in the provision of services.	What are the factors contributing to the lack of take-up of third party access to water industry infrastructure services under Part 3 of the WIC Act?	Legislative amendment is recommended To date there has been limited interest in the access regime. This may be due in part to the following. ▼ The various barriers to entry. ▼ Perceptions that section 41(3) is an unwarranted barrier to entry. This section requires IPART to consider current price determinations, including the maintenance of postage stamp pricing. ▼ The exclusion of water filtration services from the definition of "infrastructure services". The definition of "infrastructure services" specifically excludes water filtration services. This is an unwarranted barrier to entry. Water filtration services are an inseparable part of transporting water in the Sydney network from the Sydney Catchment Authority's storages to an access seeker's customers. It would not be economically feasible to duplicate the infrastructure. The need to include water filtration services to address this barrier was identified in our analysis of Sydney Water's undertaking and the consultation processes that supported that review. While aware of the importance of protecting proprietary information regarding treatment

			processes we consider that there is a greater public interest in an efficient water industry. Further, we note that only filtration services that meet all the criteria, including state significance, could be subject to a declaration.
16		Does Part 3 of the WIC Act, including the pricing principles in section 41, require amendment to better achieve its object of promoting the economically efficient use and operation of, and investment in, significant water industry infrastructure, there by promoting effective competition in upstream and downstream markets?	Clause 41(3) of the access pricing principles in WIC Act requires IPART, when considering an access undertaking or arbitrating a dispute, to have regard to any relevant price determinations for supplying water and providing sewerage services, including (where applicable) maintaining postage stamp pricing. This is a considerable constraint on the arbitrator's capacity to deliver decisions that meet the objects of part 3 of the Act (section 21). Further it creates barriers to entry as described in question 2.
17	The licensing principles are fundamental to the licensing regime. They reflect the intent of the reforms introduced under the WIC Act - encouraging competition, reducing the pressure on existing water resources and promoting recycling. They also underpin the need to ensure continued protection of public health, the environment and consumer rights.	Are the current licensing principles appropriate for achieving the objectives of the Act? a. If not, what changes in the principles should be made in order to better achieve the Act's objectives?	If IPART's proposed approach to licensing is adopted, the following licensing principle is a high level principle which should continue to be considered when granting licences to private utilities ▼ encouragement of competition in the supply of water and the provision of sewerage services There are also specific considerations that need to included and maybe incorporated into principles such as the applicant's technical, financial and organisational capacity to carry out the activities that the licence would authorise. The remaining principles are all high level

			principles that are relevant to the current scheme based licensing regime ▼ ensuring of sustainability of water resources ▼ promotion of production and use of recycled water ▼ promotion of government water policies (such as the Metropolitan Water Plan for greater Sydney) ▼ potential for adverse financial implications for small retail customers ▼ promotion of equitable sharing of the cost of infrastructure that significantly contributes to water security If IPART's proposed approach is adopted, these principles could be removed when considering granting a WIC Act licence, and instead linked to the legislation/ body dealing with individual scheme approvals (for example as part of the DA process).
18	There is currently no mechanism for preventing licensees from imposing higher charges than those indicated in their original licence applications. As such, the prices charged by small scheme suppliers cannot be effectively regulated/ controlled. Customers of small schemes may not be aware that their charges can be considerably higher than those of incumbent utilities like Sydney Water.	Should licence conditions be used to ensure that, at least for an initial period, charges do not exceed the level indicated in the application?	This type of licence condition is not necessary in IPART's proposed utility licensing approach (rather than the existing scheme based licensing approach in the WIC Act). However, transparency and provision of information to the general public has been shown to be the best practice. Therefore prior notification to potential customers of a private scheme is essential to achieve this (please see answer to question 19 below for further details). It is also important to note that new sources of water are more expensive to develop and this will be reflected in the cost of supply.
19	Purchasers of land/ homes may not always	How should the Government ensure that	At the time of purchase or rental of a property, a

	be appropriately and reliably informed about prospective charges.	those who purchase 'off the plan' are appropriately informed about prospective water and wastewater charges?	potential customer of a private water utility normally would deal with the developer, and not necessarily with the licensed operator of a scheme. The conveyance and tenancy laws should be amended to ensure that potential customers are aware that the scheme servicing the property is privately owned, and are informed of the prices and other conditions that apply because of this arrangement. It is not practical to include strict obligations in licences.
20	Experienced industry participants indicate that, below a certain size threshold, some small scale recycling schemes are not viable due to the high capital, operating and regulatory costs involved. These costs may not be well understood by many proponents at the beginning of project development. IPART's assessment of a licensee's financial capacity is limited to the point in time at which the assessment is undertaken. Consequently, it is not sufficient to adequately limit the likelihood of a retailer leaving the market causing a service disruption. This particularly applies to monopoly suppliers of essential services (eg., sewerage services).	Should the licensing principles in the Act be broadened so as to explicitly consider the financial viability of schemes, in addition to the financial capacity of the proponent?	No financial capacity assessment provisions are able to be developed that would guarantee that a new entrant would be successful in a competitive market. Financial assessments are reviews made at a point in time and do not adequately account for future changing market conditions, which cannot be predicted. Further, it includes assumptions in areas where the Regulator may not have any expertise/ experience (ie, in some WIC Act applications it may include assumptions regarding take-up rates in housing estates, cost of construction, and willingness to pay). Rather than change the licensing principles, it is more important to have effective OoLR / RoLR provisions in place to ensure that essential services are maintained in the event of a licensee's financial failure. The WIC Act currently has basic RoLR provisions which are based on similar provisions in the energy industry. It does not have OoLR provisions which are required in the event of a

			network operator's financial failure. With private decentralised networks already providing essential services to small retail customers, it is important that effective RoRL/ OoLR provisions are developed as soon as possible. Finally, small participants have found requirements for IPART's financial capacity assessments difficult to meet. This is partly because these proponents have had little experience in providing this type of information to a Regulator before. We note if IPART's proposed utility licensing approach is adopted, the financial viability would generally only need to be assessed once when the utility is licensed, rather than for every new scheme. This would reduce the burden currently on WIC Act applicants. Further, it would reduce unnecessary cost of regulation.
21		Are any other amendments required to address concerns about financial viability? For example, should the regulatory framework impose size/risk thresholds under which schemes are not permitted, or under which the onus would shift to the proponent to demonstrate that the proposed scheme would be financially viable?	No. As detailed in question 20, OoLR provisions need to be included in the WIC Act.
22	Section 51 of the Act establishes that sole providers of essential services may be declared by the Minister as monopoly suppliers. In such cases, prices charged by the supplier to customers are regulated by	Should a licensee who is the sole provider of essential water and/or wastewater services to small retail customers be automatically declared a monopoly supplier?	Licensees who are sole providers of essential services should not automatically be declared monopoly suppliers. It is IPART's view that this declaration should only be made if it can be demonstrated that a licensee exhibits monopoly characteristics that result in risks worth

	IPART. However where the supplier has not been declared one, and yet practically operates as one, there is no mechanism to protect the customers from unregulated service charges.		regulating. These risks may include licensees setting prices significantly above the efficient cost of supply. This may happen because of insufficient competition in the area, due to regulations that require customers to connect to the licensee's infrastructure.
23	In cases of protracted delays prior to connection to incumbent utility networks, 'interim' service providers usually supply water and wastewater services. In some instances, customers may be charged higher than postage stamp fees and for prolonged periods.	Should it be mandatory that IPART regulates prices charged by monopoly suppliers, monitors prices or reviews their pricing policies?	IPART does not support mandatory price regulation of all monopoly suppliers. It is our firm view that decisions about regulation and its form should be based on an assessment of costs and benefits. The costs of price regulation, monitoring and policy reviews are unwarranted where the licensee does not exhibit monopoly characteristics that result in risks commensurate with the costs of regulation. Where the licence regime remains scheme specific and the number of customers impacted is low, it remains unlikely that the benefit of price regulation will exceed the costs. Other tools such as contracts, prior notification of prices to customers and transparency requirements are better instruments to protect against risks. However, if a decision of the review is for IPART to require price regulation of all declared monopolists, we recommend that section 51 is clarified to ensure that the option of regulation by methodology is available as this is likely to be more cost-effective for smaller licensees and the diversity of this industry appropriate monitoring powers are available to support regulation by methodology a further alternative would be to establish a commercial arbitrator, or IPART, with the power

			to hear disputes between a licensee and its customers, having regard to pricing principles that could be set out in a regulation under the WIC Act.
24		What would be the implications of these proposals for proponents and regulators?	IPART's resources would need to be increased to regulate the price of every monopoly supplier under the WIC Act.
25		What other options are available to protect customers from unregulated prices charged by a monopoly supplier?	Refer to responses for questions 20 and 23. When moving into a property with a private scheme, we recommend full disclosure of price and other conditions relating to water utility services to customers. These conditions of service should also be spelt out in customer contracts. Persons investing in properties within these schemes would receive legal advice on these disclosures and contracts. If the prices or other conditions of service within the contracts are breached, litigation may be possible. Further customer issues including pricing of water and sewerage services can be raised with the Energy and Water Ombudsman and could also be referred to NSW Fair Trading.
26	There has been inconsistency in the level and quality of information provided in licence applications where applicants are required to demonstrate their capabilities. This makes assessment of the applications difficult. Licensees explain that it can be difficult to demonstrate their capabilities in relation to some of the criteria and that some of the requirements are unduly onerous.	Are the licensing criteria appropriate, balanced and justified? Are any changes required?	The licensing criteria is set out in section 10(4) of the Act as follows A licence may not be granted unless the Minister is satisfied as to each of the following: that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise that the applicant has the capacity to carry out those activities in a manner that does not present a risk to public health

			that the applicant has made, and will continue to maintain, appropriate arrangements with respect to insurance in the case of an application for a licence to supply water, that, if such a licence is granted, sufficient quantities of the water supplied by the licensee will have been obtained otherwise than from a public water utility such matters as are prescribed by the regulations such other matters as the Minister considers relevant, having regard to the public interest. In respect to sub-clause (c), we have focussed our compliance attention on whether appropriate insurance is in place upon commercial operation of the scheme, which we consider is more important for customers. In respect to sub clause (d), see our response to question 3. This requirement can be removed.
27	Financial capacity assessments provide no guarantee that a company will remain viable, especially as market conditions change. Financial capacity information is provided based on assumptions, which may change at any time. Consequently, the assessment can only be made of the organisation's financial capacity for the time at which the application was made. Further, the assumptions are difficult to verify.	Are there other approaches that would provide a higher level of certainty as to the company's ongoing financial capacity in a competitive market?	See response to question 21.

28	If a licensed corporation has a change of ownership, there is currently no mechanism to verify that it still has the technical, organisational and financial capacity to manage the licensed scheme.	Should a change of ownership (or change of third party) trigger an automatic review of the technical, organisational and financial capacity of the corporation/third party?	No further amendment is required as licences are granted to corporations and remains with the corporations even when sold (licences cannot be transferred). Currently, there is a standard licence condition that requires a licensee to maintain their technical, financial and organisational capacity to hold a licence (standard condition B1.1). A change of ownership would likely prompt IPART to review compliance with this condition. Further, a change in ownership may result in significant changes to licence plans. This will trigger a notification requirement and audit of the revised plans. In respect to third parties, the legislation should be strengthened. A licence variation should be required if a licensee wishes to change or remove a third party that they are reliant upon to meet important licence conditions. The licence variation would assess any new arrangements either being provided directly by the licensee or proposed by a new third party.
29	When a licence has been granted prior to commencing a scheme, there has been some confusion amongst applicants and government agencies as to what the licence actually entitles the licensee to do. For instance, a network operator licence is to construct, operate and maintain water industry infrastructure. However a licensee may not operate a scheme until approval to commence operation has been granted by the Minister. It is possible that this may not	Does the two stage approval process for acquiring a full operational licence require modification to provide better outcomes for applicants and regulators? a. If so, what alternative approaches should be considered?	Please see discussion of IPART's proposed licensing approach and scheme specific approvals process.

	be granted if it is found, for instance, that during commissioning the water quality is not adequate and further treatment processes are required.		
30	Currently a licence is not needed to own water industry infrastructure. It is only required to construct, operate or maintain it (or provide services from it). As such, in some developments, the licensed infrastructure operator and the owner have been separate. If the owner does not agree to finance upgrade and infrastructure maintenance works, there is a risk to the operator and customers.	Is the current licence application process appropriate? If not, should the owner, operator or both be required to apply for a network operator's licence?	Currently the WIC Act enables either operators or owners to be licensed. Our experience is that it is preferable that private water utilities are licensed (i.e., companies that are specifically established to be private water utilities). Our experience with licensing owners is that their application forms are normally more complex and require longer processing time as the entity has less capacity. Considering licensing principles often requires IPART to involve itself in reviewing contractual arrangements between the owner and third parties engaged to undertake the licensed activities. This is an unwarranted regulatory intervention which results in changes to contracts by the parties simply to meet licence Act needs. The risks associated with infrastructure not being owned by the licence holder can be addressed through new enforcement powers for IPART within the WIC Act.
31	Currently, 'authorised persons' who are included as third parties on licences do not need to undergo technical and financial capacity assessments. This could create potential risks to public health and the environment, depending on how critical the authorised person is to the management of the scheme.	Should the Act be amended regarding the technical capabilities of 'authorised persons'?	Currently, where an applicant is reliant on a third party to undertake important licence activities, the company is named as an authorised person in the licence. The licence also requires the licensee to notify us if the third party is removed or changed. Further, we undertake a technical/ organisational capacity assessment of the third party as part of the application process.

			The Act needs to be strengthened in the following 2 areas. where a licensee has relied on the experience and expertise of a third party, a licence variation should be required if the licensee proposes to change this arrangement where a third party is authorised, this should be limited to the area of their experience and expertise. Currently an authorised person is able to perform all services specified in a licence.
32	Once a licence application has been received, IPART is not required to contact the local council where the proposed scheme is located, unless the applicant proposes to connect to the Council's water industry infrastructure. Councils have expressed concern that without mandatory referral, they do not directly receive a formal opportunity to provide feedback and their views may not be duly considered. Further, some agencies such as Ministerial departments, have raised the need for further consultation, after the preliminary consultation has taken place, as most of the information that they need to consider is submitted later, once the network operating plans are drafted.	Are the appropriate stakeholders included at the mandatory referral phase of the WIC application process?	Currently, WIC Act applications are subject to an extensive consultation process. Some agencies believe that insufficient information is provided with the application. This is because WIC Act applications can be made early on in the scheme planning process (this is particularly important for large infrastructure projects). This has led these agencies to request more information to be provided with the application and reluctance for the application/scheme to be considered as a two-part process. IPART's experience is that the consultation stage can be ineffective as some government agencies do not comment on applications where they fall outside of thresholds that may be set by legislation which they would normally administer. IPART's proposed licensing approach should address the majority of these concerns, as the detailed information would be provided at a more appropriate time for agencies. If a context approval stage for the specific scheme is adopted and integrated into the development application process, the appropriate council and

			other regulatory authorities will be notified at an appropriate time (i.e., consultation at the DA process would address integration issues raised).
33		Do stakeholders have concerns in relation to insufficient and/or untimely consultation? a. If yes, where in the process is further consultation required and what form should it take?	See response above
34		Should councils be notified of all licence applications relevant to the council's local government area, and not just those where connection to council infrastructure is proposed?	If IPART's proposed licensing approach is adopted local councils would be involved at the scheme at the context approval stage, and possibly for model schemes at the final approval stage. This would provide an ability to have additional input from government and regulatory bodies at more appropriate times. If the licensing regime remains scheme specific, IPART would have no objection in providing notification to local government authorities.
35	Part 3 of WIC Act indicates that the Minister must use his/her best endeavours to process licence applications within 6 months of lodgement. However there are no ramifications if this timeframe is not met. Conversely, no 'stop the clock' provisions have been made to put the onus back on the applicant where additional information is required.	What has been the experience of applicants with the time taken to process applications? a. What changes, if any, are required to the current application process?	It is our experience that delays in processing applications have been caused by the following incomplete licence applications incomplete public versions of applications delays and incomplete responses to further information requests by IPART complexities in corporate structures without necessary contractual arrangements between parties, and particular arrangements that would give the applicant responsibility for licence functions delays in companies being able to demonstrate financial capacity to undertake schemes on an

			ongoing basis. Once a scheme has been licensed, major delays have been caused by the applicant not meeting the requirements of the audit, particularly where un-validated equipment has been installed. In response to these issues, IPART has revised the application forms to make them simpler, and to further clarify what information is required and for what reason produced fact sheets encouraged meetings with applicants to explain our requirements developed voluntary procedures (technology and sustainability assessments) to reduce the risk of not meeting audit requirements. Seldom are delays caused by IPART or the Minister. IPART would therefore prefer that this requirement remains a best endeavours clause. However, if time limits are to be imposed, a stop the clock mechanism would be required to take account of the factors that commonly delay applications lying outside IPART's control. The clock would not start until such time as a fully completed application has been prepared, and would stop every time information is sought from the applicant. Depending on the number and type of future licence applications, this may have

			consequences on resourcing. IPART's proposed licensing approach would reduce the number of licences to be granted since they will not be scheme specific. Under IPART's proposal, scheme approvals could be linked to the DA process which has mandatory timeframes embedded within the process. Finally, if the licence process is going to be changed as part of this review, it may be inappropriate to set a timeframe for processing licence applications at this time until the new process is bedded down.
36	Managing failure of physical supply of services or physical infrastructure is dependent on the licensee's own risk assessment and control/back-up measures. These are currently assessed at the initial application stage and reviewed during the audit process. Last resort arrangements are not intended to be used in the case of supply failure.	Is the risk of supply failure adequately addressed at the initial application stage?	Under the current arrangements we require evidence that contingency arrangements are in place, or are being developed, at the licensing stage. Prior to commercial operation, licence plans are audited which would include whether adequate contingency plans are in place. Under IPART's proposed licensing framework, contingency at the scheme specific approval stage would be undertaken rather than at the utility licensing phase. Arrangements will be strengthened once OoLR provisions are in place.

37		Would there be benefit in requiring applicants to furnish more information at the initial stage? If yes, please indicate what additional information should be required.	With the current process, the scheme is often not developed enough at the initial stage to allow more appropriate information to be supplied. The Proposed licensing framework would have these addressed at a later stage. Also see above response
38	Current licensees have stated that Minister approval to commence commercial operations for certain schemes, typically low risk schemes, is unwarranted and inefficient.	Is the requirement for Ministerial approval appropriate in all cases?	Approval for a WIC Act licence should remain with the Minister responsible for the Act. However, approval for the commencement of operation of a scheme could be delegated, as is currently the case with Section 60 and Section 68 approvals under the LG Act. This would reduce regulatory burden and speed up the approval time for individual schemes.
39		Should provisions be included in the WIC Act to allow the Minister to delegate some approvals to another appropriate party? a. If so, what criteria should govern the delegation of approvals?	Under IPART's proposed licensing approach, all infrastructure would be required to be constructed, operated and maintained by a licensed network operator, except where exempted from the WIC Act. These exemptions would include those that fit a model. The approval of schemes that fall under a model could be delegated to government agencies, as prescriptive guidance could be given.
40	The current regime does not allow the Minister or IPART to adjust the application requirements or standard licence conditions for individual applicants. The current conditions are considered onerous and costly for low-risk schemes (relative to the costs of building and operating the schemes).	Should there be greater flexibility in the licence regime so the level of regulation is more suited to the nature of the scheme? a. If so, what options are available to ensure the level of regulation is appropriate to the risks associated with the scheme?	IPART's proposed licensing approach would meet these objectives.

41	Some licensees have raised concerns regarding the requirement to enter into a customer contract, especially in new development areas, as this is inefficient and onerous. Deeming provisions, similar to those in effect when a customer connects to a public water utility, are considered more appropriate.	For new small retail customers that are serviced by a private water utility, should WIC service providers have deeming rights for new customer contracts?	The WIC Act Regulations should specify minimum contractual requirements to protect small retail customers' rights. For example, this could include rights in respect to disconnection/ flow limitations, payment methods, and handling of customer complaints. National energy industry legislation in this area could be used as a guide.
42	Licensees advise that addressing WIC Act's small retail customer requirements in cases where the customer is in fact a large industrial/commercial consumer is inefficient and onerous. Provisions have been included in WIC Act to protect 'small retail customers'. Licensees are usually expected to address these requirements in their retail supply management plans. Large bulk customers are expected to be able to protect themselves through individual contracts and as such are not protected in this way in the Act. In some cases large industrial/commercial customers only require a small volume of water from the licensee and as such acts as a 'small retail customer'. In these cases, the licensee is currently required to make provisions to protect the customer's interests in its retail supply management plan.	Is it appropriate that the definition of a 'small retail customer' captures small industrial/ commercial customers i.e., these customers that receive services below the specified threshold?	The definition should be redefined to meet the objective of protecting small retail customers. Currently, larger industrial customers are also captured. The definition may not necessarily be based on volume of water used. IPART's report on Sydney Water Pricing Determination 2013-2016 looks at classifying customer bases by size of connection and usage.
43		Is a retail supply licence necessary when a scheme supplies large volumes to commercial/industrial customers? a. If yes, rather than a standard retail management plan, what alternatives should be considered for licensed serviced providers supplying large customers only?	Most regulatory requirements should be linked to the supply of small retail customers. Many of the issues between a licensee and large retail customers can be dealt with contractually. The only areas where retail management plans are still relevant are continuity of supply arrangements (network redundancy and back-up supply arrangements, where relevant, and maintenance) policies for marketing and transfer of customers compliance with legislation and codes of conduct.

44	All retail supply management plans must comply with any relevant codes of practice and the marketing and transfer codes of conduct. Previously, separate retail supply management plans were required for licensees providing water and sewerage services. Now one combined plan may be submitted.	Are the requirements relating to retail supply management plans adequate?	Yes – no legislative amendment is required.
45	Some network operators have found the audit process difficult. This may be due to the complexity of some of the schemes and the requirements under the national guidelines.	Are the requirements relating to network operator plans adequate?	Legislative amendments are required. In the proposed licensing approach, an audit of a WIC Act licence would be focussed on the systems in place and the compliance of the licence holder to the legislation. This approach would be similar to the current audits of operating licences for the large public water utilities, and may include a site visit to a specific scheme. The approval process for specific schemes should be flexible enough to allow models to be developed for low-risk schemes adaptation of the conditions required for approval, according to the risk associated with the scheme.
46		Should further guidance be provided to help prepare sewage management plans?	No legislative amendments are required. We note that unlike with water quality, there is no national or state guideline to operate and manage sewerage infrastructure. In the absence of such guidelines, IPART has

			development a template within its audit guidelines that sets out the audit requirements of sewage management plans. Licensees can infer from this template what needs to be included in their sewerage management plans.
47		Without compromising standards, can the plans or the audit process be improved to make the process more efficient?	Legislative amendment is required. Currently, we consider that the requirement to have a plan for a scheme, and determining if the plan is adequate, works well. The problem that we have experienced in the past is where licensees do not include sufficient information within licence plans. This makes it difficult to audit the adequacy of those plans. This problem seems to be associated with a requirement to publish these plans. Some licensees were of the view that these plans contain confidential information and intellectual property. In response to these concerns, the WIC Act has been changed to remove the publication requirement for some plans. However, due to a drafting error there is still a requirement to publish sewage management plans. This requirement should also be removed when the WIC Act is further reviewed. Finally, it is our aim is to continually improve our audit practices and we are interested in stakeholder comment in this area.

48	There are a number of provisions in the WIC Act licence regime that ensure the level of treatment of drinking water and recycled water is appropriate for the intended end uses. The fundamental provision in the legislation is the requirement that licensees follow the Australian Drinking Water Guidelines and Australian Guidelines for Water Recycling. Validation is a proving process for each treatment component. Verification is confirmation the whole treatment train is able to produce water of the specified quality. Completing validation and verification requires the infrastructure to be operational for a period of time unless the infrastructure has previously been validated. For some schemes this is a particular challenge.	Without placing public health at risk, is it possible to improve the process by which a scheme achieves validation and verification before the Minister grants approval to start commercial operation?	To address this issue, we have developed a voluntary technology assessment process. If IPART's proposed licensing approach is adopted, a technology assessment process is part of the scheme approval preferred option. The development of the national validation framework would also streamline this process. This is being carried out by the Australian Water Recycling Centre of Excellence (AWRCoE). Further, the articulation, in either regulation or policy, of the agency with responsibility for technology assessment would address the issue by providing clear guidance to the proponent. Within the WIC Act, this is currently dealt with by using independent auditors. If the new regime does not choose to use an independent auditor or assessor, an agency will need to be resourced to assess technologies.
49		Have the current licensees readily demonstrated initial compliance with the 12 elements of the guidelines? What has been the most difficult aspect?	Yes – licensees have been assessed as meeting the 12 elements of the guidelines. There is a consistency issue between public and private water utilities that should be addressed. Public water utilities are given a transitional period to meet these guidelines while WIC Act licensees are required to be fully compliant before commencement of supply

50	Recent changes to the WIC Act application process now require an applicant to provide a statement of environmental effects. This duplicates the requirements of other legislation.	If the environment is considered under other more pertinent legislation, should there be further environmental consideration under the WIC Act? a. If yes, should the WIC Act include requirements to develop environmental plans and/or management systems? b. What alternative approaches should be considered	No- legislation is not required and further environmental requirements are best addressed in environmental legislation. We changed the application form to include a statement of environment effects. We often found that environmental reports were focussed on the construction of say, the housing estate, with little or no reference to the environment impact of the water/ sewerage infrastructure. Under IPART's proposed licensing model, this would not be a requirement for obtaining a WIC ACT licence. Environmental requirements would be addressed at the context approval stage and could possibly be done through the DA process, where a referral process is already in place or through the new planning process.
51	Section 10(3) of WIC Act prohibits the Minister from licensing an applicant that was previously disqualified. However it does not clarify whether this applies only when the disqualification is still in force or if it is indefinite.	Should the prohibition in section 10(3) on granting a licence to a disqualified corporation remain as is or be amended so it only applies to the extent that the declaration is still in force?	IPART has no objection to this proposal.
52	Section 16 of WIC Act indicates that if the Minister declares a corporation or individual as disqualified, whether indefinitely or for a specified time period, their licence may be cancelled or suspended. It is not clear however whether this only applies to the licensee or also to any 'authorised persons' named on the licence.	Should section 16 refer to persons specified in the licence as well as to the licensees?	IPART has no objection to this proposal.

53	The current wording of section 16 does not provide any guidance as to when enforcement action should be taken by the Minister or IPART and form it should take.	Should the WIC Act provide more guidance as to when enforcement action should be taken, and what form the action should take?	IPART does not support legislative amendment in this area. IPART has a compliance policy document for its licensing and energy saving scheme functions. This document is currently being revised to include the WIC ACT. It will set out when enforcement action will be taken and the processes that will be followed. We consider that processes are better on this basis. We do not consider that the WIC Act should be amended in this area
54		Should the WIC Act provide licensees with a right of appeal to the Administrative Decision Tribunal when they are aggrieved by an enforcement action?	IPART does not support legislative amendment in this area. IPART's existing compliance policy establishes an enforcement process that is procedurally fair. As indicated above, this policy is being updated to include the WIC Act and the same principles will be applied. Further, IPART, as an administrative body, is subject to administrative law principles and its decisions can be reviewed by a Court.
55	Are the existing regulatory arrangements cost effective. There are a number of government agencies involved in assessing WIC Act Applications and the administration and policy development of the legislation. All of which involve costs. There are also significant compliance costs for both the regulators and the industry	The government seeks feedback from licensees regarding the administration and compliance costs currently incurred under the WIC Act.	IPART considers that licensees are in a better position to respond to this question. However, IPART would like to acknowledge that the WIC ACT licensing regime works well for large-scale and/ or high-risk projects. We consider that the licensing regime was not designed with low-risk projects in mind. If these projects, are included IPART would support a process which is more flexible and more proportionate to risk.

56		Are there any unnecessary costs associated with meeting these requirements? If so can industry provide examples of these?	IPART considers that proponents are in a better position to respond to this question and would be interested in their views.
57		Should the application fee reflect the risk/cost of a scheme?	Currently, licensing fees are not cost reflective due to a policy decision to keep fees low so that they would not act as a barrier to competition. Fees are determined based on the size of the scheme. If fees continue to not be cost reflective, it is in some respects immaterial how these fees are determined. In these circumstances, the fee structure should be simple, easy to understand and predict. We consider that it may be difficult to predict what application fee to set, such that it reflects the risks/costs of a scheme. For example, processing some large more complex schemes may be straight forward due to the expertise and experience of the applicant. Whereas some small-scale low-risk schemes could be more costly to process due to the inexperience of the applicant.
Section 60 Approvals			
58	Neither section 60 nor section 68 refers to recycled water schemes or applicable guidelines. Provisions under these sections of the LG Act were not designed to regulate water recycling, particularly the wide range of water recycling schemes that are currently in existence. This contrasts with the WIC Act and Regulation which refer expressly to water	Should section 60 refer explicitly to water recycling schemes? If so, how should they be defined?	Under IPART's proposed licensing approach the concept approval process would be the same for WIC Act licence holders and public water utilities. This process should require compliance with the Australian Recycled Water Guidelines.

	recycling and call up the AGWR. The lack of clarity has confused proponent and regulators.		
59	Currently, metropolitan Council led recycling schemes, and all council led (metropolitan and non-metropolitan) stormwater reuse schemes, are not being licensed. They do not need to be licensed under WIC Act or section 60 of the LG Act. Only where the stormwater harvested exceeds certain thresholds, the council would need a licence under the WM Act. Further, they are not required to implement any relevant guidelines. There is a potential risk to public health arising from inadequate treatment. Further, it may encourage private proponents to try and use councils as the network operator for infrastructure, to avoid WIC Act licensing requirements. Including these councils under the LG Act will increase workload for the NSW Govt. There may not be sufficient resources to handle this.	Should the regulation of council water recycling schemes remain as is or be revised? For example by a. applying the same regulatory requirements to recycled water schemes undertaken by metropolitan and non-metropolitan councils b. including stormwater harvesting and reuse schemes (and, if so, should the level of scheme risk be a factor as to whether approval is required?) c. adding standalone provisions for recycling and stormwater reuse schemes	IPART supports a consistent system of regulation of all public or private schemes to ensure consistency and competitive neutrality, and avoid forum shopping and unnecessary costs from developing and implementing inconsistent legislation. Under the proposed IPART licensing approach, all water industry infrastructure would require an approval. This applies no matter whether a scheme is carried out by a public utility (including a Metropolitan Council) or licensed WIC Act network operator. If the large metropolitan water utilities were included in this there would need to be a review of their operating licence to ensure there was no duplication of regulation. These utilities do currently have approval roles for NSW health within their operating licences. Some approval would be for infrastructure that falls into a model. Approval for model schemes would be proportionate to the risk, and could be delegated to local council. Potentially resulting in no changes in workload to NSW Government.
60	Section 60 does not differentiate between approval to construct and approval to operate a recycled water scheme. This has created uncertainty for councils as to when in the project development process they should apply for a section 60 approval. In practice, NOW uses a 2-stage approval	Would a staged approval process be beneficial? If so, what should that look like?	IPART's preferred approach is a one-step approach, as outlined in our submission. We note that most other jurisdictions work on the basis of a 1-step approach, and any risks of getting it wrong rest with the utility. However, we also list a 2-stage approach as an alternate option. This option is designed to

	process for section 60 recycling schemes where council first needs to obtain approval from NOW to construct a recycled water treatment facility, and another approval to operate it. (This is similar to the 2-stage process used under section 68 of the LG Act, and under WIC Act.)		ensure that guidelines can be addressed while also reducing the possibility of inappropriate infrastructure being constructed.
61	Section 60 does not refer to the AGWR. However, in practice, NOW applies the AGWR framework. It requires councils seeking approval to submit documentation that demonstrates compliance with the 12 elements of the AGWR, usually in the form of a RWQMP. NOW only approves schemes that satisfactorily meet these elements.	Should section 60 specify applicable guidelines to increase clarity?	For the reason described above, IPART supports consistency in regulation across all water utilities. We would therefore consider that all water utilities should meet the requirements of the AGWR. Under IPART's proposed licensing approach, the scheme specific approvals process should generally require compliance with the AGWR and the framework.
62	NOW refers medium to high risk applications to the Water Unit of NSW Health for advice on public health and wastewater quality aspects of applications. NSW Health in turn liaises with the local Public Health Unit for review and comment. NOW does not refer low risk schemes but deals with them in-house.	Should section 60 approvals be subject to mandatory referral to other agencies (e.g., Health EPA)? If so, should a. these agencies have an advisory or concurrence role? b. referral/concurrence be required in all case?	It would be appropriate to adopt approval processes for schemes with mandatory referral to NSW Health for high exposure risk schemes. This should be applied to both public and private water utilities. NSW is currently the only jurisdiction within Australia that does not have a specific legislated role for NSW Health within the approvals process. The current inflexibility in the WIC Act licensing regime requiring referral of all schemes, regardless of risk, needs to be changed. This would ensure that low-risk schemes are not over regulated. Under IPART's proposed licensing approach, the scheme specific approvals process should have a mandatory referral process for high exposure

			schemes to NSW Health.
63	On average, about 8 days of NOW staff time is usually required to process a section 60 application. However this varies significantly depending on the quality of the application. This stems from a lack of regulatory clarity and the varying levels of council expertise in relation to water recycling. In particular, many council officers are still relatively unfamiliar with the risk-based approach used in the AGWR. There is currently no legislative time limit for processing section 60 applications or stop-the-close provisions in the event that further information is required from the applicant. There are such limits under section 68. Further, there are no dispute resolution procedures under section 60. Again, there are these provisions under section 68. NOW is not required by law to maintain a database of section 60 approvals. However it is does this anyway. IPART is required to do this under WIC Act. Finally, there is currently no approval application or ongoing administration fees for section 60 approvals. This is unfair as	The government seeks feedback on: a. difficulties encountered in the section 60 application process and suggestions for improving it b. whether the process should include: i) timeframes and stop the clock provisions ii) application and annual fees iii) dispute resolution provisions c. whether there would be merit in requiring the RWQMP to be certified by an accredited auditor prior to submission to NOW	For the reasons above, IPART supports a consistent approach in the regulatory systems for licensing. See responses to question 35 where we have responded to some of these questions in respect to WIC Act. Further, we see value in adopting the WIC Act audit framework across all water utilities in NSW. This would include requiring an approved auditor to review the adequacy of Recycled Water Quality Management Plans which would promote consistency within the industry.

	private entrants have to pay these fees under WIC Act. Further it gives the impression that a section 60 approval is less important.		
64	Standard conditions under a section 60 approval for a recycling scheme are not prescribed by regulation, as under the WIC Act. They have been developed by NOW. There is no formal framework for auditing recycled water schemes under section 60, unlike for WIC Act. NOW has developed its own compliance monitoring regime by which it inspects recycled water treatment works to ensure they are being operated and maintained safely. If they are not, NOW suspends approval until these requirements are satisfied. However it has limited capacity to oversee the growing number of schemes. Referring to it as a 'section 60 approval' instead of 'licence' may not appropriately convey its gravity and the need for ongoing requirements for scheme operators.	The government seeks feedback on: a. current compliance monitoring arrangements for council-led recycling schemes and whether changes are needed? b. options available to improve compliance monitoring - e.g., using independent auditors to audit scheme performance c. whether changes to terminology could clarify requirements?	IPART supports a consistent approach in the regulatory systems for licensing. Under IPART's proposed licensing approach, the scheme-specific approval phase would incorporate the WIC Act auditing framework. This would provide a robust approvals process which employs external independent expertise. IPART's risk based monitoring process should also be adopted. This consists of annual exception-based compliance reports and risk-based compliance/ operating audits. However, additional education programs would be required to overcome issues related to councils' ability to understand the AGWR. Developing guidance material on the application of the AGWR would also address the issue. The current complexity of regulation in NSW will continue to result in inconsistent application of the guidelines.
65	Water supply authorities under the WM Act are exempt from section 60 of the LG Act, i.e., they do not require section 60 approvals to operate recycling and stormwater reuse schemes. Under section 292 of the WM Act, they require Ministerial approval to 'construct, maintain and operate water management works and other associated works'. This includes sewage works but not recycling or	Should water supply authorities constituted under the WM Act be subject to the same requirements as local councils with respect to the water recycling schemes?	IPART supports a consistent approach to licensing. To ensure there is appropriate consistency between public and private utilities the same approvals process should be applied to all public water utilities.

	stormwater reuse schemes. NOW uses a similar process for granting section 292 approvals as it does section 60 approvals. It checks for compliance with the AGWR. No application or administration fees is payable under section 292 of the WM Act either. The WM Act also does not prescribe any compliance requirements.		
Section 68 Approvals			
66	Section 68 does not prescribe approval requirements for stormwater harvesting and reuse schemes. These are currently regulated under WIC Act. However if they are removed from WIC Act as part of the WIC Act review, there will not be sufficient approval requirements for stormwater. Commercial or industrial process water recycling schemes do not require an approval to operate under section 68. They do however require an approval to construct. All recycling schemes sourced from grey water or sewage require both approvals. The commercial or industrial waste recycling schemes may be covered by other regulatory frameworks.	Should section 68: a. refers expressly to water recycling schemes and, if so, how should they be defined? b. include stormwater harvesting and reuse schemes (to the extent such schemes are not regulated under the WIC Act)? c. regulate the operation of low risk, closed loop commercial and industrial waste recycling schemes, or are such schemes appropriately regulated under other legislation?	All water industry infrastructure should be regulated, with those schemes not fitting a model required to be carried out by either a WIC Act licence holder or a public water utility. Anything including stormwater or rainwater systems, with low exposure that falls into a defined a model could undergo approval via a standard approval process. This could be delegated to the local council. IPART supports a gap analysis to determine whether commercial or industrial recycled water schemes are adequately regulated elsewhere. This would be a component of the development of a model scheme approval. This could avoid duplication of regulation.
67	The relevant council is the approving authority under section 68, with NOW and NSW Health providing advice only (on recycling schemes), if the council requests it. There is no mandatory referral process like under WIC Act. Guidance on how to comply with section 68 C5 and C6 is provided in the 'Purple Guidelines' *(C5: approval to install; C6:*	In relation to section 68 C5 and C6 approvals (for schemes larger than single residential property), the government seeks feedback on the following: a. any issues facing applicants for section 68 approvals, including degree of clarity regarding regulatory requirements, etc. b. Any issues for councils processing section 68 applications, including technical	IPART considers that councils are best placed to respond to this question.

	approval to operate). The LG Regulation 2005 also provides some guidance on what matters should accompany a section 68 application, and what should be considered when assessing them. Generally councils charge an approval application fee, but this is usually not sufficient to recover the staff time in assessing the applications.	capacity to assess proposals, degree of integration with development consent, etc. c. Any issues for utilities relating to the connection of new infrastructure to mains water and sewer.	
68	Most councils appear to only assess section 68 applications after a DA has already been granted. There is some concern that this may create a perception that section 68 approvals will generally always be approved. The proponent can seek approval to install (section 68 C5) as part of the DA. This is currently not mandatory. However in practice, some councils have started to not accept DAs unless they are accompanied by section 68 applications (where applicable). This is to prevent development from taking place that does not have satisfactory arrangements in relation to land, water, sewerage, drainage and electricity services. If a section 68 C5 application is made and/or approved with the DA, the proponent still needs to apply separately for approval to operate (C6).	Should the link between section 68 approval and development consent be strengthened? If so, what approaches should be considered?	Under IPART's proposed licensing approach, the context approval process, if incorporated into the DA process, would strengthen Council's role. Further, it would ensure that Council is aware of a development early on in the process, and is ready to undertake a possible future approval role. It would also be beneficial to enable requirements for approvals for a scheme to be embedded in the DA approval. This could also be embedded in the new planning process.
69	Feedback from stakeholders indicates that there is a general lack of clarity around roles, responsibilities and council processes	What processes are needed within councils to ensure proposals meet all relevant regulatory requirements? For example,	Under IPART's proposed licensing approach, to overcome this issue, the concept approval stage should be centralised. Further the framework

	regarding section 68 approvals. These tend to vary from council to council. Some councils do not clearly define their requirements either. This creates a risk that relevant regulatory requirements may not be enforced (particularly the need for a C6 approval prior to commencing operation).	would a decision support tool help?	should be developed with enough flexibility to allow model approvals to be delegated back to the councils.
70	The Purple Guidelines were developed by DWE to provide guidance to proponents of recycled water projects that require Part C approval milder section 68 of the LG Act. They align with the principles outlined in the AGWR. The Guidelines are not formalised and are not referred to in the LG Act (unlike the WIC Regulation which refers to AGWR). Regardless, councils have been encouraged to use them. In practice, proponents are not tailoring the Purple Guidelines using a risk-based approach as per the original intention, and are implying applying the compliance values and requirements set out in the guidelines to their schemes as they see this as 'simpler'. Councils indicate that there is confusion among applicants, and to some extent, regulators as to the applicable guidelines for section 68 applications/schemes, the ongoing requirements on applicants, and associated costs. Often both the council and proponent are only told that they need to apply the Purple Guidelines after a section 68 application has already been lodged with the council and referred to NOW or NSW Health for advice. This sometimes results in the	Should section 68 reference particular guidelines and, if so, which ('AGWR', 'Purple', other)?	All schemes should be assessed against the AGWR. The guidelines were developed to be applicable to any recycled water scheme. Further, under IPART's proposed licensing approach, the AGWR could be used to develop requirements/ conditions for model scheme approvals

	proponent needing to redesign the scheme and/or undertake a risk assessment.		
71	NOW and NSW Health provide advice on section 68 proposals involving water recycling, if requested by the relevant council. This is not mandated by the LG Act. It is however advised in the NSW Guidelines for Management of Private Recycled Water Schemes 2008 (the Purple Guidelines). If a concurrence role is formalised, will it extend the application processing time required (under section 105 of the LG Act, councils are required to process applications within 40 days). However it would be beneficial to ensure that recycled water schemes are appropriately designed and risks are mitigated. Further this could be managed in a proactive manner, rather than reactively after an application has already been lodged with a council and may have to be amended/redesigned. Mandatory referral would be particularly beneficial in the case of metropolitan councils who have less experience in water and wastewater infrastructure. In practice, these councils tend to refer applications to NOW and NSW Health already. Mandatory referral could also promote consistency between councils as to the conditions imposed on recycling schemes.	Should section 68 approvals be subject to mandatory referral to other agencies (e.g., NOW and Health)? a. should these agencies have an advisory or concurrence role? b. should referral/concurrence apply in all cases, or should the level of scheme risk be taken into account?	Under IPART's proposed licensing approach, the scheme-specific approvals process should have a mandatory referral process for high exposure schemes to NSW Health. NSW is currently the only jurisdiction within Australia that does not have a specific legislated role for the Health Department within the approvals process. It would be determined at the context approval stage if the proposed scheme is appropriate for the local government area, and if it will fit an approved model. If not, it would need to be carried out by a public or private water utility. This should be a short process which should be able to be completed in the necessary timeframe. Scheme- specific approval would be required before commencement of the scheme.
72	Section 105 of the LG Act requires councils to process all applications within 40 days.	Are current time limits for processing applications reasonable?	IPART considers that councils and scheme proponents are best placed to respond to this

	However this can be impractical for more complex or high risk schemes and tends to be more suitable for smaller residential schemes. If referral to NSW Health and/or NOW is mandated, a longer time limit (around 80 days) will be necessary.		question.
73	Approvals under section 103 (including section 68 approvals), councils can extend or renew approvals, if there is good reason for doing so. This is different to section 60 approvals, WIC Act licences and POEO licences.	Is it appropriate that, under section 103 of the LG Act, approvals lapse after five years unless council otherwise determines?	IPART considers that councils and scheme proponents are best placed to respond to this question.
74	Similar to WIC Act, there is no provision under the LG Act to transfer approvals. However section 54 of the POEO Act enables a licence holder to apply to transfer the licence to a new person. Currently, a section 68 C6 approval is currently granted to the owner of land on which sewage management facilities are located. When the land is sold or transferred, the new owner must obtain a new approval. If not, the new owner will be penalised. The new owner is allowed a 3 month grace period to apply for a new approval. If the new owner applies for a new approval within 2 of acquiring the land, he/she can continue to operate until council determines the approval.	Should section 68 approvals be transferrable?	IPART considers that councils and scheme proponents are best placed to respond to this question.
75	The Purple Guidelines require section 68 approved recycling scheme proponents to engage an independent accredited auditor to	In relation to section 68 approvals for recycling, the Government seeks feedback on:	In order to reduce red tape and promote consistency, IPART sees value in establishing appropriate compliance monitoring requirements

	review system compliance at regular intervals. However, as there is no central register of these approvals, it is not known to what degree councils require proponents to undertake independent auditing as a condition of approval. If it is required, it is not known to what degree scheme operators comply with the requirement. The government is interested in feedback from proponents of dual reticulation schemes regarding the extent to which they regularly check for cross-connections, and any issues arising from these inspections. Concerns have been raised that the environmental health officers inspecting the section 68 approved recycling schemes have the depth of expertise necessary to determine whether they are operating in accordance with the conditions of approval. (The WIC Act arrangements may be better where an expert auditor, approved by IPART, is engaged.)	a. current compliance monitoring arrangements (including level of resources and technical expertise available to support compliance activities) b. do councils require independent audits and cross-connection checks, per the Purple Guidelines? c. levels of compliance observed d. suggestions to improve current arrangements	similar to requirements within the WIC Act (annual exception reports and risk-based external audits). See our response to question 88 regarding checking cross-connections.
76	The maximum penalty is $2,200. This was originally set for household schemes with relatively low risks and minimal impacts. Councils have expressed concern that the $2,200 penalty does not reflect the potential health risks and impacts of non-compliances related to larger scale and more complex recycled water schemes. Penalties under other legislation far exceed $2,200 (e.g., WIC Act which has monetary penalties and the Minister has the power to cancel or suspend licences, if appropriate).	Should penalties under the LG Act be increased? If so, what penalties - including non-monetary penalties - may be appropriate to support compliance?	Similar penalties to those currently applicable under the WIC Act should be applied, but should be designed to allow the fine to be proportional to the impact or risk.

77	Some Councils place highly cautious and onerous conditions of approval on schemes, while others often do not place adequate conditions. Sometimes these conditions are not reflective of the risk assessment and do not interpret the Purple Guidelines correctly.	Should section 68 conditions of approval be standardised to enhance consistency between councils? What other measures could increase consistency?	IPART considers that adopting one approvals process across public and private utilities would address this issue.
78	Councils' capacity and approach to using the risk-based process driven by AGWR is highly variable. This could be due to varying levels of skill and expertise available amongst staff. Council officers have expressed concern that they do not have the expertise to adequately assess all schemes. Options to address technical expertise and promote consistency between councils include capacity building for council officers, developing decision support tools and more detailed standard conditions of approval (similar to the WIC Act). Additional reforms could include: developing 'deemed-to-satisfy' provisions setting out recycled water quality objectives and required treatment for given end uses; mandatory referral of more complex section 68 applications to NOW and NSW Health so that they can provide consistent expert advice; concurrence roles for those agencies (to ensure that advice is given effect); centralising the regulatory role (at least in relation to high risk schemes). For these reforms to be effective, the agencies will need to be appropriately resourced.	Do councils have the expertise to assess proposed recycled water schemes, particularly complex or high risk schemes? If not, what options to address this could be considered?	IPART considers that councils and scheme proponents are best placed to answer this question. We note that to administer the WIC Act, IPART has recruited engineers and microbiologists to assess licence applications.

	Non-metropolitan councils can use the NSW Independent Local Government Review Panel to investigate and identify options for governance models, structural arrangements and boundary changes. There is also a need to build capacity among consultants and certifiers. This could be done through the 'Recycled Water Quality Management System Auditor Certification Scheme' which is currently a requirement for WIC Act auditors.		
79	If proponents submit a RWQMP endorsed by a certified auditor, this could reduce resourcing pressures on the council (who may not currently have adequate capacity to assess the technical aspects of the application). Further, this could help promote compliance with the AGWR amongst councils, particularly in the pre-construction design phase. This could help prevent design problems further along in the application process, and prevent the need for proponents to resubmit/redesign inadequate applications. These potential advantages are subject to the adequacy of the auditor.	Would there be merit in requiring proponents to submit a RWQMP certified by an accredited auditor as part of the initial section 68 application? Should councils be able to rely on this under section 93, rather than form their own view?	IPART considers that councils and scheme proponents are best placed to answer this question. We note that the requirement to develop a RWQMP certified by an accredited auditor has already been established as part of the WIC Act process.
80	If the proponent holds a POEO licence, it can install, construct or alter a waste treatment device without a section 68 C5 approval. Further, it can operate within the limits of its POEO licence, without a section 68 C6 approval. These exemptions create a risk to public	Should private recycled water schemes that hold an EPL continue to be exempt from the requirement to obtain a section 68 approval? a. what alternative approaches should be considered?	IPART considers that councils and scheme proponents are best placed to answer this question. However, we note that IPART supports a consistent approach to licensing and as such no licensing exemptions should be given.

	health. The focus of EPLs is on managing environmental impacts. They are not designed to ensure that recycled water is 'fit for purpose' and compliance with guidelines designed to protect public health. It is for this reason that there is no similar exemption under WIC Act. Holding an EPL only exempts a WIC Act licensee from needing to develop a sewage management plan. It may be appropriate to limit this exemption only to traditional wastewater schemes and not to (all) recycled water schemes.		Under IPART's proposed licensing approach, proponents of recycled water schemes would be required to be approved to operate the scheme.
81	Some councils have been warned that small private recycled water schemes are at risk of being abandoned due to high ongoing operating and monitoring costs. This is considered a particular risk when the contract period of the initial service provider expires and management of the scheme becomes the responsibility of, for example, a body corporate. Other concerns that have been expressed include: legal liability in the event of system failure; implications of system failure for public and environmental health; whether operators of decentralised systems should be subject to technical and competency requirements; the potential for economic distortion if different systems/operators are subject to different requirements.	Are there any recycled water schemes in NSW that have been abandoned or switched off (please provide details)?	IPART consider that councils are best placed to respond to this question.
82	Scheme viability is particularly important	Should scheme viability be considered at	IPART currently undertakes financial capacity

	where a proposed scheme provides essential water and/or wastewater services. WIC Act creates a framework for RoLR arrangements and work is underway to develop arrangements for OoLR. There are no equivalent provisions under the LG Act.	the approvals stage?	assessments in response to a risk that the **private** proponent may fail. This is important especially in the absence of a proper RoLR/ OoLR scheme(see response to question 20) A RoLR/ OoLR scheme is necessary to maintain essential services of a failed **private** operator. We cannot envisage a situation where essential services being provided by local council would cease operation. Therefore, we consider that a financial capacity assessment of these schemes is not necessary.
Cross-sectional issues			
83	Distortionary effects: Currently metropolitan council run recycling schemes do not need a section 60 approval. As private sector participants would need a WIC Act licence, it is possible that they could seek to have the relevant metropolitan council take responsibility for the infrastructure, to avoid applying for a WIC Act licence. This could result in financial and legal implications for councils over the operational life of the schemes. Councils may feel pressure to facilitate developments without being adequately involved in the initial design phase. Could this increase public health risks and costs? Adopting consistent regulatory principles across the sector may help ensure that regardless of which legislative framework applies, equivalent outcomes are achieved.	The Government seeks feedback regarding: a. Evidence of distortionary effects (please provide details) b. Whether there is a need for measures to avoid such effects	IPART is not aware of any specific examples of distortionary effects due to inconsistent regulation between private and public schemes. However, we are aware of schemes that could have either been developed as public or private schemes that have ended up as public utility schemes. IPART is not aware of the reasons behind these decisions. Irrespective of whether there are any distortionary effects or not, regulation in this sector should be consistent for competitive neutrality reasons. Best regulatory practice should be adopted to protect public health and safety and the environment. IPART therefore supports the following principles to guide policy development ▼ consistent regulation for the NSW water industry no matter whether a private or public utility is providing the service ▼ any regulatory gaps (i.e., lack of regulation of metropolitan councils) should be rectified, to

			ensure a consistent approach to regulation. Finally, IPART considers that IPART's proposed licensing approach could be equally applied to both private and public utilities.
84	The overlap between WIC Act and the LG Act has been addressed in part. Schemes licensed under WIC Act do not also need a section 68 approval under the LG Act. However the reverse has not been done. That is, schemes already approved under section 68 can still need a WIC Act licence. Requiring section 68 approved schemes to also require a WIC Act licence may be appropriate to reduce public health risks (as the WIC Act requirements are more stringent). However it can lead to increased costs for proponents and regulators. One of the root causes of the overlap is the breadth of both the WIC Act and the LG Act scopes. It could be addressed by focussing/clarifying the scopes of both Acts. Alternatively, responsibility for regulation of schemes could be divided based on the risk of the scheme.	How should the government address the overlap between the WIC Act and the LG Act, in relation to existing private recycled water schemes (larger than single household)?	It is appropriate that like schemes (whether privately or publicly operated) are regulated in the same manner. Where it is decided that certain types of schemes (already subject to section 68 approvals) should hold a WIC Act licence, a further transitional period may be appropriate, particularly, if higher standards will be imposed by the WIC Act licence.
85	At present, planning, health and environmental considerations are not always addressed in an integrated manner. This is usually because development applications and applications for approvals/licences are not received and assessed concurrently. The POEO Act and the EP&A Act ensure that the consent authority and the relevant	To what degree should planning, environmental and recycling approval processes be streamlined? How should this be done?	The approvals process should be streamlined. In IPART's proposed licensing approach this would occur at the context approval stage. This would be further integrated if this stage formed part of the new planning process.

	approval body work concurrently to ensure that if an approval is declined, so is a consent, and the terms of a general consent granted by the consent authority is consistent with the approval conditions granted by the approval authority. There are similar provisions under section 90 of the LG Act. There WIC Act licensing regime currently does not have a statutory link with the development approval process under the EP&A Act. To date most WIC Act licence applications have been received after development consent has already been granted. This may pose pressures on the Minister for Finance & Services to grant the WIC Act licence as well. The EP&A Act does not refer to section 60 and section 68 approvals under the LG Act. The EP&A Act does allow development applications to include section 68 C5 approvals to install (C6 approvals to operate must be provided separately). However councils are not required to consider these concurrently (unless imposed by a Local Environmental Plan).		
86	Proponents and regulators have indicated confusion over the distinction between water recycling schemes and effluent disposal as these terms are not clearly defined. (There is some inconsistency across the Acts and Guidelines/frameworks, in how terms such as 'water' and 'recycled water' are defined.)	The Government seeks feedback on whether there is a need to clarify definitions and, if so, options to achieve this.	Clarification of what is water recycling versus what is effluent disposal is important in determining which guideline (EPA guidelines or the AGWR) would apply in assessing licence applications and ongoing compliance.
87	Regulatory requirements tend to focus on the	Should auditors examine the degree to	Auditing of this requirement is already carried out

	adequacy of the treatment process for recycled water schemes and do not sufficiently prioritise the reticulation system and engagement with individual end users. This creates potential risks to public health, particularly with the growing number of schemes and end users. Scheme management and engagement with end users is addressed in incident management plans. The plans are usually only audited for their adequacy at a desk top level. They should be audited to check if they are kept up-to-date and implemented. Reviewing the quality of the plans, and their implementation, is in line with the AGWR.	which incident management plans are implemented?	under the WIC Act licensing regime. IPART's auditing approach could also be adopted for public utility schemes.
88	In risk assessments of recycled water schemes, the highest risk is cross connections between recycled water and drinking water pipes. This is confirmed by the incidence of cross-connections which have been recorded in all major dual reticulation schemes in Australia. The Purple Guidelines state that proponents of dual reticulation schemes are meant to regularly check for cross-connections.	Should there be a standard licence condition requiring post occupation checks or audits to manage the risk of cross connections?	It would be more appropriate to address this risk through discussions with NSW Fair Trading. With the change in the plumbing regulations, public and private water utilities are no longer able to access properties as they are not the plumbing regulator. It is currently the responsibility of NSW Fair Trading to carry out inspections of household plumbing, when it deems it high enough risk. An additional area of control could be through changes in conveyancing laws to require cross checks to be carried out as part of a property sale. Further, an education program for home owners and renters in dual pipe areas should also be encouraged.
89	Section 124 of the LG Act allows councils to order a person to connect to the council's water supply or sewerage system. This helps achieve public health objectives and has	Should the power for councils to order connection to council's water supply or sewerage network be repealed or qualified so as to be consistent with competitive	This section of the LG Act should be amended. IPART agrees that the current arrangements are not consistent with the operation of a competitive market where private schemes may be in direct

	environmental benefits, and ensures scheme affordability and ongoing financial viability. However, it hinders the person from being able to connect to a private sector provider, if one is available. There is no evidence that this has already happened. However this could be considered to be in odds with the principles of the Competition Principles Agreement.	neutrality principles? What implications could this have for local councils? What alternative approaches should be considered?	competition with a public water utility. .
90	Private developments operating within a major water utility's area must obtain a compliance certificate from the water utility, prior to commencing development. This certificate can require certain conditions or standards of the utility to be maintained. Some WIC Act licensees see this requirement as being regulated by their competitor. Option: IPART could liaise with the public water utility, on the private proponent's behalf, to seek input from the utilities on connection standards, etc. Similarly when other developments propose to connect to WIC Act licensed infrastructure, consent authorities could similarly be required to notify the WIC licensee to seek their input in relation to connection standards, etc.	Should changes be made to current arrangements regarding connection of proposed schemes to existing water utility infrastructure? What options should be considered?	IPART would like to consider the views of private and public network owners before formulating its position on this matter.
91	Until recently, it was mostly government agencies and government owned utilities that provided water and wastewater services. Water planning and drought management was more easily managed centrally. With private entrants providing water services,	Should schemes above a certain size be required to provide capacity and supply information to facilitate water planning and drought management? If so, what information, and how could such information be provided?	No legislative amendment is required to achieve this objective. In the WIC ACT, we have developed Reporting Manuals which licensees must comply with. Currently, the Reporting Manuals include some basic operating statistics that must be provided

	water planning and drought management becomes more complex. Therefore it is important that good information on water supply and demand is available to water planners, particularly as the contribution from private entrant's increases. Consideration should be given to a standard licence condition for scheme proponents to report annually on their scheme capacity and the volume of water produced. For schemes over a certain size, proponents could also be required to report to government any 'planned outages' that will impact their capacity to product water in given period.		annually (i.e., volumes of recycled water produced). These indicators can easily be amended to meet Government information requirements. IPART's processes can be adapted to apply to the local public water authorities.
Looking into the future			
92	AGWR requires WIC Act licensees and section 68 approved proponents to undertake periodic reviews of their schemes. This can be expensive. 'Requality' was developed to enable review of schemes against a standard set of requirements. However this has not helped to significantly reduce auditing/review costs. Section 68 proponents are using the guideline values provided in the Purple Guidelines directly (State Guidelines). Proponents tend to not tailor the guidance to their specific scheme requirements using a risk based approach, as was originally intended when the Purple Guidelines were designed. This tends to be because it is more expensive to undertake a risk analysis for all schemes. It may be of benefit to prescribe compliance values in the Guidelines, based on the	The Government seeks feedback from stakeholders about their experiences with the national and state guidelines, including in relation to verification and validation.	The AGWR are based on the development of treatment barriers and the validation of the treatment processes for the removal of pathogens under operational conditions. This has been a significant change in focus from end point monitoring only and reduces the risk to public health. However, validating new equipment is both time-consuming and costly. There appears to be some confusion within the industry regarding pre-validated equipment. This has resulted in equipment having to be replaced within some schemes prior to approval being granted to commence commercial operation. This has caused delays in commencing operations and additional costs. Currently the ARWCoE is working on developing a national framework for validation (NatVal). Adopting NatVal will address many of the

	AGWR, particularly for low-risk schemes. The AGWR does not prescribe an approach for validating or verifying the target Log Reduction Values for schemes. This is to ensure flexibility, and for schemes to tailor it to suit the specific scheme. However it poses challenges for proponents and regulators who may not have the skills required to assess the adequacy of the validation/verification processes used. Further, there is no consistency in the requirements posed for validation and verification, across Australia. A national approach may be required. A National Validation Framework is currently in progress. In the interim, complementary reforms may be important.		problems with validation costs, technical expertise requirements for regulators, and consistency. We strongly recommend that NSW support the framework and use it when it is completed. In the interim, until national validation guidelines are adopted by all jurisdictions, there is a need for greater guidance to be provided to proponents. This could be by way of a fact sheet or some other form of guidance document prepared by IPART in consultation with NSW Health.
93	Proponents of small scale but high-risk schemes have raised concerns about the large costs related to the degree of validation/verification and ongoing monitoring required. The cost of treatment and monitoring is significant, and potentially presents a barrier to investment. However, it is still critical to manage health risks by ensuring that recycled water produced is fit for purpose. An approach to reduce regulatory requirements and costs for lower risk schemes needs to be considered. Feedback from stakeholders indicates that some schemes are being built and operated for an initial period, and then stopped due to high ongoing operating costs. Further, the availability of relatively low cost potable water hinders customers from choosing to use	Should the regulatory framework consider the financial viability of the schemes? If so, how? a. Should proponents be required to undertake a financial assessment, particularly schemes providing essential services? b. What alternative approaches should be considered?	Also see response to question 20. No legislative amendments are required. We support OoLR provisions as the best solution to the problems identified. Any financial capability assessment has limitations. It is an assessment at a point of time and, as market conditions change, may no longer be valid at a future time. Further, it is based on assumptions that are difficulty to verify by the Regulator or others (eg, assumptions such as take-up rates in housing developments in WIC Act applications). These assessments may lead to a false sense of security by the public regarding the financial capacity of the applicant and the incorrect impression that the Regulator has "endorsed" the

	higher cost recycled water. In other cases, schemes have stopped operating due to risks to public health or operational challenges and high costs. If schemes are being stopped unexpectedly, it can have adverse implications for utilities that may need to provide services of last resort as they may need to significantly increase their investment in infrastructure, more than initially expected/was planned for. Proponents need to consider the costs of constructing, validating and verifying, operating and maintaining, monitoring and auditing a scheme over its lifetime. Guidance material may need to be developed to help with this decision making. Requiring proponents to submit RWQMPs which have been reviewed by an accredited auditor with their approval/licence applications could also help. Currently IPART reviews schemes' financial viability as part of the licence application review process. This could be adopted by other regulators. The AGWR does not address financial viability but the Purple Guidelines do. This assessment should also consider estimated charges to potential customers, in view of public health and the customers' capacity to switch suppliers.		financial capacity of this company. In reality, many caveats are placed on financial capacity assessments and we emphasise that this form of assessment provides no guarantee that a new entrant will succeed in a competitive market. We consider that the best way to protect customers (particularly small retail customers) against financial failure of a private utility is to have in place effective Retailer of Last Resort (RoLR) and Operator of Last Resort (OoLR) Schemes. The WIC Act currently has a basic RoLR scheme in place and Government action is underway to enhance this scheme and develop an OoLR scheme. In the absence of such schemes, financial viability assessment of each individual scheme is undertaken that also examines the financial capacity of the applicant and/ or the applicant's parent company. In practice, this has led to delays in applications and additional costs, particularly for small new entrants. Whether the current assessments provide greater protection to customers is questionable. Consideration could be given to reducing this requirement once effective RoLR and OoLR schemes are in place. For example, in energy licensing we simply require applicants to provide a suitably worded statutory declaration attesting to their financial capacity within the next 12 months. A similar approach could be considered for the WIC Act if effective RoLR and OoLR schemes are in place.
94	Regulator fees currently being charged tends	Should regulator fees be set based on	Licensing fees have been set at below cost

	not to be reflective of their costs to assess the applications, and to administer schemes over their lifetimes. No annual fees are being charged under the LG Act. No application fees are charged for section 60 applications (under the LG Act). Should annual fees be set on a cost recover/partial cost recovery basis? This could be set based on the scheme's risk profile as this is an important determinant of costs to regulators. This could have an added benefit of signalling to proponents of the wide economic cost of their proposed schemes so that they can decide whether it is beneficial to opt for a high risk scheme, or could a lower-risk scheme be used instead?	scheme risk or complexity? What alternative approaches should be considered?	recovery. Fees that fully cost recover maybe a barrier to entry, particularly for small new entrants to the market. Time required for the assessment of an application is often based on factors other than the complexity of the scheme. Information supplied in the application, and the contractual arrangements in place between organisations involved in the development, make it more complex. This is not directly related to the risk of the scheme. A dual pipe scheme carried out by 1 company will require fewer resources to process than a low-risk irrigation scheme carried out on behalf of another entity, and supplying to several different customer bases. The experience of the applicant in applying for a WIC Act licence will also impact on the level of resources required for processing the application. If IPART's proposed licensing model is adopted, lower fees could be set for those schemes which fall into a model approval and higher fees for those which require a full assessment. Annual licence fees must not exceed the cost of administering the WIC Act during the year to which the fee relates; in relation to the licensee (see section 14(2) of the WIC Act). A strict interpretation of this condition would lead to uncertainty with fees varying from year to year per licensee. The drafting of the WIC Act is not very practical and should be amended.
95		Should approval bodies other than the primary regulator receive fee revenue to help cover costs?	Currently all licensing fees are paid to consolidated revenue and are not retained by IPART. What level these fees should be set at

			and how these fees should be used are decisions for Government. Currently a significant amount of resources are given over to recycled water scheme assessment which are difficult to track and define as necessary, as they are not linked to clear regulatory requirements. A clear role for a secondary regulator will have to be defined to allow fees to be charged. Fees that fully recover costs may act as a barrier to entry, particularly for small new entrants to the market.
96	Concerns have been expressed that current regulatory requirements and costs (particularly for low risk schemes) may be unnecessarily impeding investment in recycling. Particular concern has been expressed regarding the cost of validation and verification Some stakeholders have expressed a preference for a more prescriptive regulatory process as it is considered to be more straight-forward than the risk-based approach. For example, in Victoria recycled water is classified based on its end-uses and regulatory requirements for recycled water are prescribed based on the relevant class. Prescriptive regulation can help regulators who may not have sufficient capacity to judge whether the regulatory requirements are being met sufficiently. However it is not as flexible as the risk-based approach and is less able to accommodate innovation.	Should regulatory requirements reflect the level of risk associated with each scheme? a. If so, what broad framework would be best for both proponents and regulators? b. Is there merit in adopting a tiered approach to recycled water regulation, similar to that in Victoria and Queensland? c. Is there merit in adopting a hybrid approach to reduce regulatory costs while retaining flexibility? d. Should the Purple Guidelines be repealed or revised (if so, how)?	We agree with the principle that the level of regulation should be proportionate to the level of risk. In our proposed licensing approach, infrastructure which fits a model would have a simplified approval process and would be delegated to councils. Infrastructure that does not would be required to obtain a scheme specific approval. All of these schemes should follow the AGWR as these guidelines have been designed to be applied to all types of recycled water schemes. Further, they are flexible enough to support innovation within the industry. In comparison while Queensland and Victoria have a tiered approach, they still have a requirement to obtain approval from a central body. Higher-risk schemes require additional consultation with other agencies (egg, in Victoria, it is the Department of Health) with higher end point quality, monitoring and reporting

	A hybrid model may be an option, with prescriptive regulation particularly targeted at low risk schemes (use a tiered model). Specific regulatory requirements could be prescribed for each tier. Where it is unclear what tier applies, an expert regulatory body could be consulted, or the proponent could be asked to use a scheme specific risk analysis (such as the existing model). A possible disadvantage of this model may be that ongoing operations are not regulated properly and even low-risk schemes could have an effect on public health (in case of non-compliance). If a hybrid model is not appropriate, it may be appropriate to have all proponents use the AGWR (and not use the guidance provided in the Purple Guidelines). However this could significantly increase costs for low risk schemes.		requirements. A similar process could be adopted within NSW with the exact requirements for schemes being determined at a later stage. The Purple Guidelines were designed to help proponents and councils interpret the AGWR in the context of a section 68 approval. Since their development, the understanding of the validation and verification requirements for treatment technologies has advanced. The guidelines should be reviewed in light of this new understanding and in light of any regulatory changes that occur as a consequence of the review of recycled water regulation in NSW.
97	If WIC Act and/or the LG Act are amended, or if a new consolidated framework is designed, the following regulatory features have been suggested: Consistency between requirements and regulatory approach for public and private entities; ensure proposal (including design) is fully developed from the outset and application process is integrated with other approvals; clarify the applicable requirements and guidelines; ensure regulatory requirements are proportionate to risk; ensure regulators have sufficient expertise; undertake	The Government seeks feedback regarding the regulatory features that should be considered for inclusion in any future reforms.	IPART's proposed licensing approach outlines the regulatory changes that need to be addressed. This approach has been designed using the Better Regulation Office principles and PWC report *A best practice approach to designing and reviewing licensing schemes. Draft Guidance Material*. The proposed licensing approach would also include clarifying applicable requirements and guidelines, developing education material, and supporting regulators and industry for a smooth transition to a new framework.

	robust compliance monitoring based on holistic management from source to end use (develop a consistent sector-wide compliance monitoring framework); protect consumers (last resort arrangements for WIC Act and the LG Act).		Appendix B outlines the changes to the WIC Act and regulations, and other Acts that should be considered to clarify inconsistencies and confusion with the application of the current legislation.
98	Councils have indicated that they have limited resources and expertise to deal with complex recycling schemes, and therefore it would not be appropriate to transfer some schemes that currently fall under WIC Act to be regulated under the LG Act or WH&S Act. Is it appropriate to have a consolidated legislative framework, administered by a centralised regulatory authority/ by two or more appropriate regulatory authorities? Or should the scope of WIC Act, LG Act and other legislation be amended? Decisions regarding the appropriate scope of these acts need to be made with regard to the capacity of the regulators to manage risk. If schemes are to be transferred, say to the WH&S Act, should specific guidance be developed to help develop a risk management approach, and therefore help regulators ensure a safe working environment, consistent with their statutory obligations?	Is specific guidance required to support the WH&S framework in relation to industrial water recycling schemes?	We would support a risk and gap analysis of these types of schemes to determine whether they need to be licensed or could be regulated by another agency under separate legislation. Any duplication of regulation should be avoided.
99		Should monitoring frameworks be created to ensure appropriate ongoing management of industrial waste recycling schemes?	See response to the above question.
100	Should we use a centralised decision-making	The government seeks feedback on what	IPART's proposed licensing approach does not

	model, using a single regulator? Or decentralised decision-making using a large number of entities? Factors relevant to the decision on which level of government should be responsible for regulation include location, expertise and economies of scale (expertise and resources). A centralised approach would enhance consistency and address problems of economies of scale. A decentralised approach is more advantageous where location is an issue. Lack of expertise and resources can be addressed by mandatory referral to expert regulators, using independent accredited auditors, or prescribing water quality standards and compliance monitoring. These changes could be done more easily than creating a centralised agency. If a decentralised approach is retained, we should consider which roles/duties should be retained by which regulator.	is the best way to allocate and administer regulatory responsibility? For example, should a consolidated regulatory framework be developed or current arrangements retained?	specifically allocate responsibility apart from indicating that IPART should retain its role of administering the WIC Act and metropolitan public water utility licences. A consolidated regulatory framework would provide the best allocation of resources, by consolidating the expertise of the current regulatory agencies. This will also ensure consistency in application of the framework to both public utilities and WIC Act utilities. While it is possible to consolidate the proposed licensing approach into one organisation it is not necessary. The Utility licence process would be carried out at a different stage and address different requirements than the scheme specific approval. The greatest point of inconsistency in the current regulatory framework is at the scheme specific approval stage. To address this, the process should be consolidated. This would include developing the model for scheme approval processes. The Food regulation in NSW provides a suitable precedence for this. Approval models for low-risk environments are developed and approval and compliance is delegated to local councils for implementation. Support, education and training are provided by the Food Authority. Allocation of responsibilities is a government policy decision and should consider the best outcome for the allocation of resources.
101		What alternative regulatory models should be considered?	See IPART's proposed licensing approach outlined in our submission

102	If a centralised model is adopted, it is important that the central body has sufficient resources and tools to process applications in a timely way. If a decentralised model is retained, ongoing capacity building and training is likely to be required to ensure that regulators have the skills required to manage risks appropriately. Alternatively, perhaps external expertise (such as accredited auditors) could be used to reduce the regulatory burden on councils.	What capacity building, tools and resources are required for proponents and regulators to ensure that risks to human health are appropriately managed?	IPART has assembled an expert team of analysts that are capable of assessing licence applications. Through our Technical Services and Audit Panel, we have developed a list of trained industry expert/ auditors that we can call upon to examine more complex issues. In respect to public health issues, we have developed a close working relationship with NSW Health who is the prime regulator in this area.
103		Could external expertise (e.g., accredited auditors) help reduce the regulatory burden in councils? Based on experience with private certifiers, what issues need to be addressed?	Within the WIC Act, we have successfully implemented a Technical Services and Audit Panel of expert industry auditors that we use to review the adequacy of licence plans, determine whether schemes are safe to operate, and review ongoing compliance by licensees. Further, we have developed audit guidelines setting out our expectations for audits. We consider that IPART's audit framework should be adopted across the water utility sector.
104	Building and maintaining capacity required to ensure that risks to human health are appropriately managed will cost money. The degree to which costs are warranted depends on the benefits that they achieve. A cost benefit assessment can be used to assess whether the costs related to reform will provide sufficient benefit to be justifiable. The objective of this reform is to lower the overall cost burden, without increasing risks to	How should the efficiency of reform outcomes be assessed?	As there are currently no guidelines for the development of licensing frameworks, we have used the PWC Draft document *A best practice approach to designing and reviewing licensing schemes conceptual framework*: *October 2012* (available at IPART's website). As outlined in the document, it is important to ensure that the objectives of the licence are well defined.

	health. Implementing reforms that allow new entities to provide water services must be supported by adequate regulatory resources to avoid putting human health at risk.		The efficiency of the reforms can be determined by how well the objectives have been met and how effectively the identified problems been addressed.

B Requested specific legislative changes to the WIC Act and other legislation

	Section of Water Industry Competition Act 2006 (the WIC Act)	Issue	Proposed amendment
1	Section 5(1)(b)	In a current licence application we have a situation where among other non-potable supply arrangements; a private utility intends to supply potable water to small retail customers in a high rise apartment building. The potable water is being obtained from a public water authority at the connection point between public water network and the building owner's connection to this network. At no time will the potable water enter "*water industry infrastructure*" as defined by the WIC Act. In these circumstances, a person may not require a Retail Supplier's licence to supply potable water. Therefore small retail customers in these circumstances may not be adequately protected.	Amend section 5(1)(b) to capture this supply scenario.
2	Section 5(3)(b)	Licensing customers of Public Water Utilities (PWU) Presently section 5(3)(b) operates to exempt a PWU to supply water/sewerage services by means of infrastructure in its area of operations. However, it does not exempt the PWU's customer, if the customer happens to need further infrastructure (eg,. holding dam/ treatment plant and reticulation/ irrigation system) to use the water supplied. See also discussion below of issue with lack of clarity as to what is the "customer	An amendment is required to clarify how this exemption is to work so as to ensure recycled water/water reuse market of PWUs is not negatively impacted. For example, if Eraring Energy is also required to have a WIC Act licence because of section 5(3)(b), it may add costs rendering the reuse of the water from Hunter Water Corporation (HWC) uneconomical. Further, clarification of the definition of "customer connection point" in relation to defining what "water industry infrastructure" is, is captured by section 5.

		connection point" in the definition of "water infrastructure".	
3	Section 5(4)(a)	Clarify how the exemption for water management works to which Chapters 4, 5 & 6 of the Water Management Act operates. For example, was it intended to exempt Private Irrigation District (PID) infrastructure from WIC Act licensing, yet require the PID's customer (an "irrigated holding" within the private irrigation district) to require a WIC Act licence for its holding dam and irrigation system?	Amend section 5(4)(a) to clarify, or consider moving to Regulation and clarifying in the Regulations.
4	Section 6	Authorised third parties – further controls This section enables the licensee and any other person specified in the licence to undertake licensed activities. A person may be named in the licence if they are a third party engaged by the licensee to undertake important functions for the purpose of the licensed activities. Sometimes authorised third parties named in a licence may have influence over the licensee. (eg,. A developer may engage, for a set period, a licensee to provide utility services within its development. It is not uncommon for the developer to construct the reticulation network within the development. For this reason developers are often named as authorised persons within the licence.) In these circumstances it may be appropriate for IPART/ Minister's enforcement powers to extend directly to	An amendment should be made to allow for the following ▼ where a licensee has relied on the experience and expertise of a third party, a licence variation should be triggered if the licensee proposes to change this arrangement ▼ to require the licensee to use the authorised party to supply the particular retail services, or undertake particular functions where the licensee lacks experience/ expertise and is relying on the third's party's expertise/ experience to undertake important functions of the licence. ▼ to be able to limit the authorised third party involvement in the licensed activities to their area of expertise/ experience. By authorising a third party in a licence, there may be a question as to whether they are authorised to undertake all activities under a licence including areas where they lack expertise/ experience ▼ the ability to also directly enforce licence conditions against authorised third parties as well as licensees.

		these third parties.	
5	Section(2)	Given the requirement that annual licence fees must not exceed the cost of administering the WIC Act, *during the year to which the fee relates, in relation to the licensee*, it is unclear whether the Minister can employ a methodology to impose the annual licence fees on licensees, or if the fees need to be based on actual costs incurred per year per licensee.	Amend section to clarify that the Minister can employ an appropriate methodology to work out the annual licence fees. It is not practical, and too uncertain and variable, to base the fee on actual costs incurred year to year.
6	Section19	Power for a licensee to request licence cancellation. There is no express provision for a licensee to request to cancel its licence.	Amend section to allow the licensee to request the Minister to cancel the licence.
7	Section 92	IPART Guidelines	Recommend including a provision that licensees must comply with guidelines issues by IPART (eg, audit guidelines).
8	Dictionary	There is uncertainty regarding what "customer connection point" means in the definitions of "water infrastructure" and "sewerage infrastructure". There is a lack of clarity as to what is downstream or upstream of a "customer's connection point to a water main/stormwater drain/sewer main". For example, HWC provides recycled water to The Vintage holding dam. The Vintage manages the water in the dam and reticulates it for irrigating the golf course and parks/verges. Is the holding dam and irrigation system upstream or downstream of the connection point? HWC supplies secondary effluent to Eraring	Amend the definition to clarify that storages and irrigation pipes situated downstream of a "customer connection" point are not within the definition (as long as they are the customer at the lowest level / end-use customer and the product is 'fit for purpose" ie, for the customer's use only, no further treatment and no supply to others). Consider whether the WIC Act should regulate schemes involving customers of PWUs who further treat the water for a low-exposure end-use.

		power station, which further treats it and reuses it in cooling towers. Is the additional treatment process upstream or downstream of the customer connection point? There is a lack of clarity as to whether certain infrastructure should be caught under this definition or not eg, infrastructure for the production of snow (snowmaking infrastructure). Also, there is a need to consider if temporary infrastructure should be excluded from the definition of "water industry infrastructure". Currently the definition does not exclude temporary sewerage services and water supplies involving reticulation, collection, treatment.	

	Clause of Water Industry Competition (General) Regulation 2008	**Issue**	**Proposed amendment**
1	Clause 5(1)	Definition of "small retail customer" Workplace 6 (Aquacell) will supply less than 15ML/yr of water to Sydney Harbour Foreshore Authority (SHFA) which makes SHFA a "small retail customer" (SRC) under Clause 5(1). However, SHFA is an organisation that does not need the protections of a SRC.	Consider reviewing the definition of a "small retail customer" - the current threshold volume appears to be too high or the method of defining a small retail customer should be changed.
2	Clause14	The process for a Minister-initiated licence variation is unclear.	Amend clause to specify the process for a Minister-initiated variation to a licence.

		The existing process for initiating a variation to a WIC Act licence is instigated by the licensee. It is equally likely that the Minister may initiate a variation to the licence.	
3	Schedule 1, Clause 2(1) Schedule 2, Clause 1(2)	The safety notification requirements under this Clause are ambiguous	Clarification is required on whether a licensee's notification obligation arises where there is an incident that threatens, or could threaten either of the following ▼ Water quality, public health, or safety (ie, safety to the public or in any other context) ▼ Water quality, public health, or public safety.
4	Schedule 1, Clause 2(1),	There is a lack of clarity regarding the meaning of bringing new infrastructure into "commercial operation."	Clarification is required on the meaning of bringing infrastructure into "commercial operation".
5	Schedule 1, Clause. 2(1), Clause. 2(3)	There is a lack of clarity around the meaning of "new infrastructure", as follows ▼ for instance, if a person transfers ownership of infrastructure to a WIC Act licensee, is that infrastructure "new infrastructure" for that licensee? ▼ in Clause 2(3), clarification should be given to ▼ the meaning of "different technology" ▼ what it means for design, construction and operation of infrastructure to be "inconsistent with" the plans for the existing infrastructure.	Clarification is required on the meaning of "new water or sewerage infrastructure".
6	Schedule 1, Clause 2	There is a lack of clarity around whether new areas / new schemes can be added as a licence variation.	Amend to clarify.

		Currently, it appears that changes to licence conditions can only be made via licence variations.	
7	Schedule 1, Clause 6(3)(a)(i), Clause 7(5)(a), Clause 13(3)(a)(i), Clause 14(4)(a) Schedule 2, Clause 7A(3)(a)	There is confusion over the meaning of "adequacy of the plan".	Clarification is required on the meaning of "adequacy of the plan".
8	Schedule 1, Clause 12	Currently, the WIC Act does not require operational audits to be made publicly available on licensees' websites (only plan audits must be made available).	Include requirement to post operational audits (ie, audits of a licensee's compliance with the WIC Act, regulations and licence) on the licensee's website.
9	Schedule 1, Clause 16	Currently, the WIC Act requires a licensee to make its infrastructure operating plan and sewage management plan publicly available on its website. This leads to licensees not including sufficient information in the plans, in order to protect intellectual property and confidential information.	Remove requirement for licensees to make their infrastructure operating and water quality plans publicly available on their websites. Delete Clause 16(b) and (c) in Schedule 1 as well, or specify that a "public" version should be uploaded to the website as an alternative (as mentioned below).
	Schedule 2, Part 1	A WIC Act licensed retail supplier could potentially supply water or provide sewerage services from illegal infrastructure and not be in breach of the WIC Act or Regulation.	Require WIC Act licensed retail supplier to supply water or provide sewerage services only from infrastructure that is operated and maintained by either a WIC Act licensee or a PWU.
	Schedule 2, Clause 7A	Retail Supply Management Plans (RSMPs) Currently, there is no obligation in the WIC Act to provide details of a customer billing system or how the licensee will ensure that its retail administrative systems are up to scratch.	Consider amending the provisions to require details of customer billing systems and other administrative functions to be included in RSMPs.

	Schedule 2, Clause 7A(3)	Licensees are required to get an independent audit on the adequacy of their RSMPs, if a "significant change"' is made.	Amend clause so that a licensee must notify IPART of any "significant change" to its RSMP, and provide a copy of the amended RSMP to IPART, It should not be left to IPART or the Minister's discretion as to whether or not an audit as to adequacy is required. Consider whether similar clauses in relation to other operational plans (infrastructure, water quality, sewage management) should be similarly amended. This would mean notification requirements under standard licence conditions Schedule B B7/B8 in WIC Act Network Operator's and Retail Supplier's licences would no longer be necessary.
	Schedule 2, Clause 7B	Currently, the WIC Act does not require operational audits to be made publicly available on licensees' websites (only plan audits must be made available).	Include requirement to post operational audits on licensees' website.
	Schedule 2, Clause 7B	The requirement for licensees to make their RSMPs publicly available on their websites leads to licensees not including sufficient information in the plans, in order to protect intellectual property and confidential information.	Remove requirement for WIC Act licensees to make their RSMPs publicly available on their by deleting Clause 7B(1)c). Alternatively, the WIC Act should specify that a public version can be made available on the licensee's website that does not include the relevant intellectual property or confidential information. The full version should be provided to IPART/Minister.
	Schedule 3, Clause 2 and 3	Clarify operation of exemptions for works under the Water Management Act & Water Act. There is a lack of clarity as to how these exemptions are supposed to work in practice. They exempt a water supply work or work under the *Water Management Act* (WM Act) or *Water Act* (the Water Acts) respectively only if "used solely for the purpose of taking water", pursuant to the various entitlements under the Water Acts. Does this mean the works (eg. levy, dam, channel, etc.) needed to "take" the water are	Close legal consideration on how these exemptions work in practice and whether they are having the desired policy result is necessary. For example, Kosciuszko-Thredbo (KT) holds WM Act licences for its water supply works used to take water for drinking purposes. "Water supply works" are defined to "include a work used to take water from a water source, store the water or convey the water to the point it is being used, including the reticulation system of such works". However, KT's infrastructure also includes disinfection treatment plants.

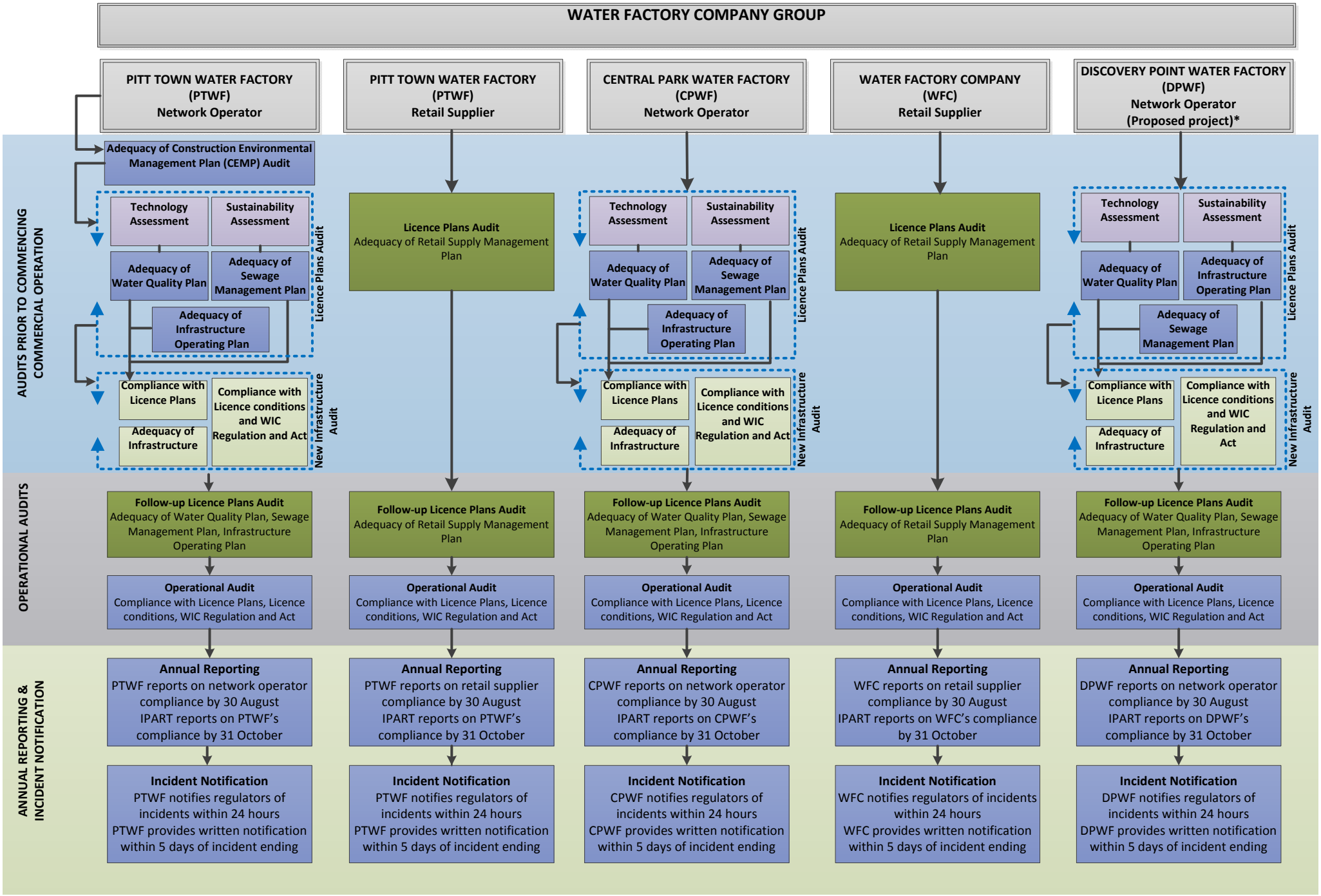
		exempt, but the infrastructure needed to use the water may not be (eg, irrigation pipes/channels, plant used to treat/filter the water taken before using, pipes to reticulate water from the dam)? Does this depend on the definition of "water infrastructure" in the WIC Act, and relevant definitions in Water Acts?	
	Schedule 3, Clause . 10(b)(i)(C)	The expression "manager of a strata plan" is not used or defined in the WIC Act, the WIC Regulations, or legislation dealing with strata title *(Strata Schemes (Freehold Development) Act 1973, Strata Schemes (Leasehold Development) Act 1986, and Strata Scheme Management Act 1996)*.	We assume that the clause intends to refer to "strata scheme." a "manager of a strata scheme" and "owners of list in a strata scheme". If so, the clause should be amended.
	Schedule 2, Clause 7A	Retail Supply Management Plans (RSMPs) Currently, the WIC Act is very prescriptive in what is to be included in RSMPs and this means some areas that become apparent are not catered for (eg, incident notification requirements).	The Regulation should set out core requirements for what is to be included in the RSMPs, but with an ability for IPART to produce a guideline document to support the requirements.

	Section of other Acts	**Issue**	**Proposed amendment**
1	Clause 48 of the *Local Government (General) Regulation 2005*	The exemption is broad and covers both Part B and Part C of section 68 of the Local Government Act (the LG Act). WIC Act licensees should only be exempt from parts C5 and C6 of section 68 of the LG Act. Exempting WIC Act licensees from Part B of section 68 of the LG Act means WIC Act licensees no longer require specific approval from councils to interconnect with	IPART's preference is to restrict the exemption to parts C5 and C6.

		their systems (Parts B1 and B4 of section 68 of the LG Act).	
2	Section 73 of the *Sydney Water Act 1994.*	Requirement for a compliance certificate from Sydney Water Corporation to meet DA condition – is this appropriate to WIC Act licensees?	Consider whether this should be removed.
3	Section 75 of the *Sydney Water Act 1994.*	Do WIC Act licensees need similar powers to collect developer charges within their area of operations? Are there other market mechanisms? A question on this issue was asked during consultation for WIC regulations.	Consider if similar powers should be given to WIC Act licence holders.

C Comparison of audit requirements

CURRENT WICA LICENSING REGIME



*Note: DPWF is a proposed project. The diagram shows what its compliance regime would look like under the current WICA licensing regime, if the scheme is approved.

LEGEND:

- Mandatory Items
- Voluntary Items
- Greenfield Scheme Only Items
- Items undertaken only if required (determined by IPART)

PROPOSED WICA LICENSING REGIME

WATER FACTORY COMPANY GROUP (WFC)
NETWORK OPERATOR AND RETAIL SUPPLIER LICENCES
FOR NON-POTABLE WATER, POTABLE WATER AND SEWERAGE SERVICES

OPERATIONAL AUDIT

Compliance with WIC Regulation and Act, Australian Drinking Water Guidelines, Australian Guidelines for Water Recycling and Licence conditions

- Water Quality Management System
- Infrastructure Operating Management System
- Sewage Management System
- Environmental Management System
- Quality Management System

ANNUAL REPORTING

WFC reports on its compliance by 30 August
IPART reports on WFC's compliance by 31 October

OPERATIONAL AUDIT

Adequacy of design and infrastructure

Compliance with WIC Regulation and Act, Australian Drinking Water Guidelines, Australian Guidelines for Water Recycling and Licence conditions

CONTEXT APPROVAL

PITT TOWN SCHEME SPECIFIC APPROVAL	CENTRAL PARK SCHEME SPECIFIC APPROVAL	DISCOVERY POINT SCHEME SPECIFIC APPROVAL (Proposed project)*
Technology Assessment	Technology Assessment	Technology Assessment
Sustainability Assessment	Sustainability Assessment	Sustainability Assessment
New Infrastructure Assessment	New Infrastructure Assessment	New Infrastructure Assessment

INCIDENT NOTIFICATION

WFC notifies regulators of incidents within 24 hours WFC provides written notification within 5 days of incident ending	WFC notifies regulators of incidents within 24 hours WFC provides written notification within 5 days of incident ending	WFC notifies regulators of incidents within 24 hours WFC provides written notification within 5 days of incident ending

*Note: DPWF is a proposed project. The diagram shows what its compliance regime would look like under the proposed new WICA licensing regime, if the scheme is approved.