



Independent Pricing and Regulatory Tribunal  
New South Wales

5-year review prepared under the *Water Industry Competition Act 2006* (NSW)

**Veolia Water Australia network operator's licence (09\_001)**

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# Contents

<b>Tribunal Members</b>	<b>iii</b>
<b>Executive summary</b>	<b>6</b>
<b>1 Introduction</b>	<b>7</b>
1.1 We sought to update licence conditions and considered whether new risks had emerged	7
1.2 We consulted with relevant stakeholders to inform our review	8
1.3 We had regard to the licensing principles in the WIC Act in making our recommendations	8
1.4 We were mindful of changes to the WIC Act licensing framework	9
1.5 We recommend changes to VWA's network operator's licence conditions to align them with more recent licences	9
<b>2 Our review of VWA's network operator's licence</b>	<b>10</b>
2.1 We propose immaterial changes to the licence scope	10
2.2 We propose material changes to three licence conditions	10
2.3 We propose to add two new licence conditions	11
2.4 We propose to remove one existing licence condition	12
<b>3 Recommendations</b>	<b>13</b>
<b>Appendices</b>	<b>15</b>
<b>A Proposed network operator's licence</b>	<b>1</b>
<b>B Proposed licence condition amendments</b>	<b>2</b>



## Executive summary

The Independent Pricing and Regulatory Tribunal of NSW (IPART) has conducted a 5-year review of Veolia Water Australia Pty Ltd's (VWA) network operator's licence under section 85 of the *Water Industry Competition Act 2006* (WIC Act). This is the second 5-year review of the licence.

Our original assessment of VWA's network operator's licence application had regard to the licensing principles in section 7 of the WIC Act. We revisited these principles as part of this 5-year review.

We consulted with VWA and the Minister for Water, Property and Housing's (Minister) Department as part of the review process. We did not receive any comments. We have not proposed any significant changes to the licence conditions.

We recommend that the Minister varies VWA's network operator's licence (licence no. 09\_001). The proposed variations seek to align VWA's licence with our standard licence conditions for network operators. We consider that standardising licence conditions across network operators' licences will clarify the intent of the licence obligations, apply an equitable regulatory framework and allow us to more efficiently regulate licensees through consistent audit processes and an established compliance monitoring approach.

We also recommend amending the licence to update the licence structure, and licence language and terminology to improve readability and provide clarity.

# 1 Introduction

The Minister granted VWA's network operator's licence on 8 April 2009. This review is the second 5-year review of the licence.

This report outlines our recommendations to vary the existing licence conditions, add two new licence conditions and remove one licence condition.<sup>1</sup> It also summarises our analysis and reasons for recommending the changes.

## 1.1 We sought to update licence conditions and considered whether new risks had emerged

The 5-year review process allows us to consider whether the existing licence conditions are appropriate to efficiently and effectively regulate WIC Act licensees. Licence conditions should direct licensees to achieve the desired outcomes, without imposing unnecessary compliance and administrative costs. This is in line with good regulatory practice.

### We identified benefit in updating licence conditions

The review provided an opportunity to update VWA's network operator's licence conditions to align them with other more recent licence conditions. We consider that applying the recently updated standard licence conditions to VWA's licence will:

- ▼ Address gaps in the existing licence
- ▼ Clarify the intent of licence obligations for the licensee
- ▼ Apply an equitable regulatory framework
- ▼ Allow us to more efficiently regulate licensees through improved and more consistent audit processes
- ▼ Improve the efficiency of administering licences until the new licensing regime, the amended WIC Act, comes into effect.

### We did not identify additional risks

The review allows us to reconsider licence conditions in light of emerging risks to the scheme. We considered VWA's licence scope and compliance record and formed the view that there are no substantial issues that warrant further varying VWA's network operator's licence.

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<sup>1</sup> In accordance with section 85(3) of the WIC Act.

## 1.2 We consulted with relevant stakeholders to inform our review

We sought a submission from VWA on its existing network operator's licence on 17 April 2019.<sup>2</sup> VWA confirmed that it had no comments or concerns regarding the existing conditions of its licence on 3 June 2019.<sup>3</sup>

We sought submissions from the Department of Planning and Environment (DPE) on the existing licence.<sup>4</sup> DPE did not propose any changes to VWA's existing licence. We sought submissions from the Department of Planning, Industry and Environment (DPIE)<sup>5</sup> on the proposed amendments.<sup>6</sup> DPIE made no comments on the proposed changes.<sup>7</sup>

The Minister must notify the licensee of any proposed amendments to licence conditions and give the licensee a reasonable opportunity to make submissions with respect to the proposed amendments.<sup>8</sup> The Minister must consider any such submissions with respect to the proposed amendments.

We only consulted with VWA on the existing network operator's licence conditions, and not our proposed amendments. We previously agreed to this approach with DPE as it allows the Minister to make further proposed changes to the licence following our recommendation. The Minister should consult with VWA on all proposed changes.

## 1.3 We had regard to the licensing principles in the WIC Act in making our recommendations

We had regard to the licensing principles in section 7 of the WIC Act (Box 1.1). Our recommendation to add, remove and amend VWA's licence conditions to align them with more recent licence conditions is in line with the licensing principles as it provides:

- ▼ Increased protection of public health and public safety (by having clear requirements for meeting plumbing standards).<sup>9</sup>
- ▼ Better consumer protection (by having clear plumbing and safety standards, and by clarifying requirements for the delineation of responsibilities where there are interconnections with other utilities).<sup>10</sup>
- ▼ Ensured sustainability of water resources (by having clearer auditing and reporting requirements for licensees).<sup>11</sup>

We consider that our proposed changes do not materially impact the remaining licensing principles.

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<sup>2</sup> Letter to VWA, Chief Executive Officer, IPART, 17 April 2019.

<sup>3</sup> Letter to IPART, NSW General Manager – Water, Veolia Water Australia Pty Ltd, 3 June 2019.

<sup>4</sup> Email to DPE, Director Regulation and Compliance, IPART, 20 May 2019.

<sup>5</sup> DPE and DPIE were the respective Minister's departments at the time of consultation.

<sup>6</sup> Email to DPIE, Director Regulation and Compliance, IPART, 20 September 2019.

<sup>7</sup> Email to IPART, A/Director Metropolitan Water and Utilities, 10 October 2019.

<sup>8</sup> WIC Act, section 17.

<sup>9</sup> WIC Act, section 7(1)(a).

<sup>10</sup> WIC Act, section 7(1)(a).

<sup>11</sup> WIC Act, section 7(1)(c).



### **Box 1.1 Licensing principles under section 7(1) of the WIC Act**

“In considering whether or not a licence is to be granted under this Part and what conditions are to be imposed on such a licence, 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.”

**Source:** WIC Act, section 7.

## **1.4 We were mindful of changes to the WIC Act licensing framework**

The *Water Industry Competition Amendment (Review) Act 2014* (Amending WIC Act) will result in significant changes to the WIC Act licensing framework and consent conditions. The Amending WIC Act includes a changed scope for schemes that will require a licence and provisions to transition currently licensed schemes to the new framework where appropriate. Therefore, we have recommended minimal changes and primarily seek to bring VWA’s network operator’s licence in line with the standard network operator’s licence conditions. We consider this is appropriate given the impending changes to the WIC Act and licensing regime.<sup>12</sup>

## **1.5 We recommend changes to VWA’s network operator’s licence conditions to align them with more recent licences**

The following section outlines our analysis and our recommendations. In summary, we propose to update VWA’s network operator’s licence (the proposed licence is in **Attachment A**) as follows:

- ▼ Restructure the licence scope in Schedule A into three parts, Section 1, Section 2 and Section 3 (section 2.1 of this report).
- ▼ Update three conditions in Schedule B related to insurance, reporting information for our register of licences and delineating responsibilities (section 2.2).
- ▼ Add two new licence conditions in Schedule B related to notification of changes to end use, and notification of non-compliant plumbing (section 2.3).
- ▼ Remove one licence condition from Schedule B related to the provision of licence plans (section 2.4).
- ▼ Standardise licence structure, language and terminology throughout the licence.

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<sup>12</sup> The Amending WIC Act is expected to come into force in late 2019.

## 2 Our review of VWA’s network operator’s licence

### 2.1 We propose immaterial changes to the licence scope

The licence scope is set out in Schedule A of the existing licence. We propose to restructure Schedule A into three sections, one for non-potable water, one for drinking water and one for sewerage infrastructure. This aligns the licence with our standard template. We consider that applying the standard licence template, while maintaining the language in VWA’s existing licence, improves clarity with no material changes to the licence scope.

### 2.2 We propose material changes to three licence conditions

We propose to amend three licence conditions on:

- ▼ Insurance requirements
- ▼ Reporting information related to the Register of Licences
- ▼ Delineating responsibilities where there are interconnections with other infrastructure.

The reasons for our proposed changes are in Table 2.1.<sup>13</sup>

**Table 2.1 Proposed licence condition amendments which have resulted in material changes**

Current licence clause(s)	New licence clause	Reasons for the change	We had particular regard to the following licensing principles in making our recommendation
B2 Obtaining appropriate insurance	B2 Maintaining appropriate insurance	<ul style="list-style-type: none"> <li>▼ Clarify when VWA must hold insurances, ie, before commencing licensed activities and not when the licence is granted. We consider this is appropriate as there may be substantial lag time between obtaining a licence and commencing the licensed activities.</li> <li>▼ Consolidate insurance requirements for obtaining insurance (B2) and maintaining insurance (B3) into one clause to reduce repetition and improve clarity.</li> </ul>	<ul style="list-style-type: none"> <li>▼ The protection of consumers under s7(1)(a) of the WIC Act</li> <li>▼ The potential for adverse financial implications for small retail customers under s7(1)(f).</li> </ul>
B3 Maintaining appropriate insurance			

<sup>13</sup> The current and new licence clause wording is provided in Table B.1 of Appendix B.

Current licence clause(s)	New licence clause	Reasons for the change	We had particular regard to the following licensing principles in making our recommendation
B7 Reporting information in relation to the Register of Licences	B6 Reporting information in relation to the register of licences	<ul style="list-style-type: none"> <li>▼ Clarify VWA's reporting requirements on the Register of Licences.</li> <li>▼ Specify when VWA must report on changes related to the non-potable water.</li> <li>▼ Clarify the manner and form which VWA must follow when notifying us.</li> <li>▼ Remove the obligation for VWA to report on changes to waste disposal arrangements as this condition only relates to schemes providing sewerage services.</li> </ul>	<ul style="list-style-type: none"> <li>▼ Ensuring the sustainability of water resources under s7(1)(c).</li> </ul>
B10 Delineating responsibilities - interconnections	B8 Delineating responsibilities	<ul style="list-style-type: none"> <li>▼ Allows IPART to specify when VWA's code of conduct to manage interconnection must be established by, if one has not already been established under clause 25 of the <i>Water Industry Competition (General) Regulation 2008</i> (NSW) (WIC Regulation).</li> <li>▼ Require that the code of conduct includes what fees and charges are payable, and by whom, in respect of use of the licensed infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>▼ The protection of public health, public safety and consumers under s7(1)(a) of the WIC Act</li> <li>▼ Ensuring the sustainability of water resources under s7(1)(c).</li> </ul>

## 2.3 We propose to add two new licence conditions

We propose to include two new licence conditions on:

- ▼ Notification of changes to end use (clause B9 of the proposed licence)
- ▼ Notification of non-compliant Plumbing (clause B11 of the proposed licence).

The reasons for our proposed changes are in Table 2.2.<sup>14</sup>

**Table 2.2 Proposed new licence clauses**

New licence clause	Reasons for including this clause	We had particular regard to the following licensing principles in making our recommendation
B9 Notification of changes to end-use	<ul style="list-style-type: none"> <li>▼ Require VWA to notify us if it proposes to use non-potable water for a use that is not covered in its approved water quality plan.</li> <li>▼ This allows us to confirm that the scheme generates non-potable water of a quality which is appropriate for the intended end-uses.</li> </ul>	<ul style="list-style-type: none"> <li>▼ The protection of public health, public safety and consumers under s7(1)(a) of the WIC Act.</li> </ul>

<sup>14</sup> The current and new licence clause wording is provided in Table B.2 of Appendix B.

New licence clause	Reasons for including this clause	We had particular regard to the following licensing principles in making our recommendation
B11 Notification of non-compliant Plumbing	<ul style="list-style-type: none"> <li>▼ Require VWA to notify the customer and the regulator of non-compliant plumbing</li> <li>▼ This reduces the risk of adverse impacts on VWA's customers resulting from improper and illegal plumbing connections.</li> </ul>	<ul style="list-style-type: none"> <li>▼ The protection of public health, public safety and consumers under s7(1)(a) of the WIC Act.</li> </ul>

## 2.4 We propose to remove one existing licence condition

We propose to remove the requirement for VWA to provide IPART with its licence plans as this requirement is already in the network operator's Reporting Manual. The reason for our proposed change is in Table 2.3.<sup>15</sup>

**Table 2.3 Proposed deleted licence clause**

Current licence clause	Reason for including this clause	Considerations in making our recommendation
B9 Provision of copy of Plan	<ul style="list-style-type: none"> <li>▼ This condition duplicates a requirement in section 3.10 of the Reporting Manual for Network Operator's Licensees.</li> </ul>	<ul style="list-style-type: none"> <li>▼ Inefficient regulation caused by duplicative requirements on VWA.</li> </ul>

**Note:** We updated the *Network Operator's Reporting Manual* on 4 August 2019 to include the requirement for licensees to provide us with a copy of its Plans at the same time that it provides a copy to an approved auditor as required under the WIC Regulation.

<sup>15</sup> The current and new licence clause wording is provided in Table B.3 of Appendix B.

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## 3 Recommendations

We recommend that the Minister for Water, Property and Housing:

- 1 Vary the conditions of VWA's network operator's licence to make minor changes and bring it in line with the standard licence conditions for network operator's licences (**Attachment A**) subject to consulting with VWA.

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence variations. The Minister may, if circumstances so require, seek further advice from us in relation to the licence variations.

Upon making a decision to vary the licence or otherwise, the Minister may provide IPART with a notice of the decision and the reasons for the decision. We will make the information in the notice available to the public on our website, in accordance with the requirements of the WIC Act. We will also notify the licensee of the amended licence.





## Appendices







## A Proposed network operator's licence

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## B Proposed licence condition amendments

**Table B.1 Proposed licence clause amendments which have resulted in material changes**

Current licence clause(s)	New licence clause
<b>B2 Obtaining appropriate insurance</b>	<b>B2. Maintaining appropriate insurance</b>
<p>B2.1 Before commencing to commercially operate the Specified Water Industry Infrastructure under this Licence, the Licensee must:</p> <ul style="list-style-type: none"> <li>a) obtain insurance that is appropriate for the size and nature of the activities authorised under this Licence;</li> <li>b) provide a copy of each certificate of currency of the insurance obtained to IPART; and</li> <li>c) demonstrate that the insurance obtained is appropriate for the size and nature of the activities authorised under this Licence by providing a report to IPART from an Insurance Expert that: <ul style="list-style-type: none"> <li>i) certifies that in the Insurance Expert's opinion, the type and level of the insurance obtained by the Licensee is appropriate for the size and nature of the activities authorised under the Licence; and</li> <li>ii) is in the form prescribed by the Reporting Manual.</li> </ul> </li> </ul>	<p>B2.1. The Licensee must hold insurance that is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.</p> <p>B2.2. The Licensee must provide a copy of each certificate of currency of the insurance maintained by the Licensee to IPART in accordance with the Reporting Manual.</p> <p>B2.3. Before commencing to commercially operate the Specified Water Industry Infrastructure under this Licence, the Licensee must demonstrate that the insurance held is appropriate for the size and nature of those commercial operation activities, by providing a report to IPART from an Insurance Expert that: <ul style="list-style-type: none"> <li>a) certifies that in the Insurance Expert's opinion, the type, scope and limit of the insurance held by the Licensee is appropriate for the size and nature of those commercial operation activities; and</li> <li>b) is in the form prescribed by the Reporting Manual.</li> </ul> </p>
B2.2 <i>[Not applicable]</i>	B2.4. <i>[Not applicable]</i>
<b>B3 Maintaining appropriate insurance</b>	
B3.1 The Licensee must maintain insurance that is appropriate for the size and nature of the activities authorised under this Licence.	<p>B2.5. If, in relation to the activities authorised by this Licence, there is, or is to be, a change in either of the following, the Licensee must provide a report to IPART in accordance with the Reporting Manual:</p> <ul style="list-style-type: none"> <li>a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or</li> <li>b) the type, scope or limit on the amount of insurance held by the Licensee.</li> </ul>
B3.2 The Licensee must provide a copy of each certificate of currency of the insurance maintained by the Licensee to IPART in accordance with the Reporting Manual.	<p>B2.6. From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner and form and within the timeframes specified by IPART, from an Insurance Expert certifying that in the Insurance Expert's opinion the type, scope and limit on the amount of insurance held by the Licensee is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.</p>
<p>B3.3 If there is to be a change in:</p> <ul style="list-style-type: none"> <li>a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or</li> <li>b) the type, scope or limit on the amount of insurance held by the Licensee,</li> </ul> <p>in relation to the activities authorised under this Licence, the Licensee must provide a report to IPART in accordance with the Reporting Manual.</p>	<p><i>[Note: The circumstances in which IPART may request a report under clause 2.6 include (but are not limited to) the following:</i></p> <ul style="list-style-type: none"> <li>• where IPART considers that there may be a change in the type, scope or limit on the amount of insurance held by the Licensee in relation to activities that the Licensee is carrying out under this Licence;</li> <li>• where there is a change in the type or extent of activities authorised by this Licence; or</li> <li>• where IPART or an approved auditor considers that the type, scope or limit on the amount of insurance held by the Licensee may not be appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.]</li> </ul>
<p>B3.4 From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner, form and time specified by IPART, from an Insurance Expert certifying that in the Insurance Expert's opinion the type and level of the insurance held by the Licensee is appropriate for the size and nature of the activities authorised under this Licence.</p>	
<p><i>[Note: The situations in which IPART may request a report under clause B3.4 include (but are not limited to) the following:</i></p> <ul style="list-style-type: none"> <li>• when IPART has reason to believe that there may be a change in the type or level of insurance held by the Licensee in relation to activities authorised under this Licence;</li> <li>• where there is a change in the type or extent of activities authorised under this Licence; or</li> <li>• when IPART or an approved auditor has reason to believe that the type or level of insurance held by the Licensee may not be appropriate for the size and nature of the activities authorised under this Licence.]</li> </ul>	

Current licence clause(s)	New licence clause
<p><b>B7 Reporting information in relation to the Register of Licences</b></p>	<p><b>B6. Reporting information in relation to the register of licences</b></p>
<p>B7.1 Within 14 days of any change in relation to the following, the Licensee must notify IPART, and provide details, of the change in accordance with the Reporting Manual:</p> <ul style="list-style-type: none"> <li>a) any source from which the water handled by the Specified Water Industry Infrastructure is derived;</li> <li>b) the Authorised Purposes of the water handled by the Specified Water Industry Infrastructure;</li> <li>c) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the Specified Water Industry Infrastructure for the purpose of supplying water to its customers;</li> <li>d) any other water infrastructure to which the Specified Water Industry Infrastructure is connected;</li> <li>e) <i>[Not applicable]</i></li> <li>f) <i>[Not applicable]</i></li> <li>g) the arrangements for the disposal of waste from the Specified Water Industry Infrastructure.</li> </ul>	<p>B6.1. The Licensee must notify IPART, and provide IPART with details, of any change in relation to the following, in accordance with the Reporting Manual, within 14 days of the change:</p> <ul style="list-style-type: none"> <li>a) any source from which the water handled by the Specified Water Industry Infrastructure is derived;</li> <li>b) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the Specified Water Industry Infrastructure for the purpose of supplying water to its customers;</li> <li>c) any other water infrastructure to which the Specified Water Industry Infrastructure is connected;</li> <li>d) in the case of non-potable water, the authorised purposes for that water;</li> <li>e) <i>[Not applicable]</i>;</li> <li>f) <i>[Not applicable]</i>; and</li> <li>g) <i>[Not applicable]</i>.</li> </ul>
<p><b>B10 Delineating responsibilities - interconnections</b></p>	<p><b>B8. Delineating responsibilities</b></p>
<p>B10.1 Where a water industry code of conduct under clause 25 of the Regulation has not been established by order published in the Gazette and some or all of the Specified Water Industry Infrastructure is connected to water industry infrastructure owned by a person other than the Licensee, the Licensee must make arrangements in relation to the respective responsibilities of the Licensee and each licensed network operator, licensed retail supplier and/or public water utility that is responsible for the other water industry infrastructure.</p>	<p>B8.1. If a code of conduct has not been established under clause 25 of the Regulation, the Licensee must, by a date specified by IPART, establish a code of conduct (Licensee's Code of Conduct) in accordance with this clause 8.</p>
<p>B10.2 The arrangements are to be agreed in writing between the Licensee and the licensed network operators, licensed retail suppliers and/or public water utilities (as the case may be) prior to commencing commercial operation of the Specified Water Industry Infrastructure.</p>	<p>B8.2. Before the Licensee brings the Specified Water Industry Infrastructure into commercial operation or by a later date specified by IPART (if any), the Licensee's Code of Conduct must be agreed in writing between:</p> <ul style="list-style-type: none"> <li>a) the Licensee; and</li> <li>b) each licensed network operator, licensed retail supplier and/or public water utility that: <ul style="list-style-type: none"> <li>i) supplies water or provides sewerage services by means of any water industry infrastructure that is connected to the Specified Water Industry Infrastructure; or</li> <li>ii) constructs, maintains or operates any water industry infrastructure that is connected to the Specified Water Industry Infrastructure.</li> </ul> </li> </ul>
<p>B10.3 The arrangements must address the following matters:</p> <ul style="list-style-type: none"> <li>a) responsibility for the repair, replacement or maintenance of any pipes, pumps, valves, storages or other infrastructure connecting some or all of the Specified Water Industry Infrastructure to any water industry infrastructure owned by a person other than the Licensee,</li> <li>b) responsibility for water quality,</li> <li>c) liability in the event of the unavailability of water,</li> <li>d) liability in the event of infrastructure failure,</li> <li>e) responsibility for handling customer complaints.</li> </ul>	<p>B8.3. <i>[Not applicable]</i></p> <p>B8.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 8.2 by, at a minimum, providing for:</p> <ul style="list-style-type: none"> <li>a) who is responsible for repairing, replacing or maintaining any pipes, pumps, valves, storages or other infrastructure connecting the Specified Water Industry Infrastructure to the other water industry infrastructure;</li> <li>b) who is responsible for water quality;</li> <li>c) who is liable in the event of the unavailability of water;</li> <li>d) who is liable in the event of failure of any water industry infrastructure;</li> <li>e) the fees and charges payable in respect of the use of the water industry infrastructure; and</li> <li>f) who is responsible for handling customer complaints.</li> </ul>
<p>B10.4 The arrangements made under this clause B10 are to remain in place until a water industry code of conduct is established under clause 25 of the Regulation.</p>	<p>B8.5. The Licensee must not contravene the Licensee's Code of Conduct to the extent that it makes the Licensee responsible or liable for the matters set out in it.</p>
<p>B10.5 The Licensee must not contravene the water industry code of conduct to the extent that it makes the Licensee responsible or liable for the matters set out in it.</p>	

**Table B.2 Proposed new licence clauses**

New licence clause
<b>B9. Notification of changes to end-use</b>
B9.1. If the Licensee proposes to operate the Specified Water Industry Infrastructure to supply non-potable water for an end-use which is not set out in the most recent Water Quality Plan provided to IPART, the Licensee must notify IPART in writing at least 3 months before commencing such operation.
<b>B11. Notification of non-compliant Plumbing</b>
B11.1. If the Licensee becomes aware that a customer's Plumbing is not Code Compliant, the Licensee must, within 10 days, notify the customer and the Plumbing Regulator, in writing, of that fact.

**Table B.3 Proposed deleted licence clause**

Current licence clause
<b>B9. Provision of copy of Plan</b>
B9.1 Whenever the Licensee makes a significant amendment to a Plan, the Licensee must provide a copy of the amended Plan to IPART at the same time that it provides a copy to the approved auditor engaged to prepare a report as to the adequacy of the amended Plan, as required under the Regulation.