

# **5-year review of Aquacell's retail supplier's licence (09\_004R) and network operator's licence (09\_003)**

Prepared under the *Water Industry Competition Act 2006* (NSW)

**Water — Report to the Minister**  
July 2015



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

Erin Cini

(02) 9113 7778

Independent Pricing and Regulatory Tribunal of New South Wales

PO Box K35, Haymarket Post Shop NSW 1240

Level 15, 2-24 Rawson Place, Sydney NSW 2000

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

[www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)

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## 1 Summary

The Independent Pricing and Regulatory Tribunal of NSW (IPART) has conducted a 5-year review of two Aquacell Pty Ltd (Aquacell) licences under the *Water Industry Competition Act 2006* (WIC Act).

We recommend that the Minister varies Aquacell's retail supplier's licence (licence number 09\_004R) and Aquacell's network operator's licence for 1 Bligh Street (licence number 09\_003) to bring them into line with the IPART standard licence template.

## 2 Background

In accordance with the WIC Act, IPART is to review each licence at intervals of not more than five years, with the first review commencing on the fifth anniversary of the granting of the licence.<sup>1</sup> Aquacell's retail supplier's licence and its network operator's licence for 1 Bligh Street were granted by the Minister on 2 February 2010. We commenced our 5-year review of these licences on 2 February 2015.

Following the review, IPART is to prepare a report for the Minister, which may include recommendations as to the variation or revocation of existing licence conditions or the imposition of new licence conditions.<sup>2</sup> This report meets that obligation and summarises our analysis, issues raised by stakeholders through their submissions and our recommendation to vary the licences. It also contains the proposed licences.

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

### 2.1 The review of the WIC Act and the new licensing regime

The primary purpose of the 5-year WIC Act licence review is for IPART to consider the appropriateness of existing licence conditions in our efficient regulation of licensees. In line with good regulatory practice, the licence conditions should direct the licensees to achieve the desired outcomes without imposing unnecessary compliance and administrative costs.

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<sup>1</sup> WIC Act, section 85(2).

<sup>2</sup> WIC Act, section 85(3).

However, we note that the *Water Industry Competition Amendment (Review) Act 2014* will result in significant changes to the WIC Act licensing framework and conditions of consent. All existing licences will transition to the amended legislation, which we understand from the Metropolitan Water Directorate, will come into force in mid-2016.

Given the impending changes to the WIC Act and the licensing regime, we are recommending relatively minor changes that would make Aquacell's licences consistent with the current standard licence conditions. The standard licence conditions have been developed and implemented since Aquacell's licences were issued, and are used as the base template for all new WIC Act licences and variations to licences.

Applying the standard licence template will address gaps in the licences, provide clarification for the licensee, and improve the efficiency of administering the licences in this transitional period before the licensing regime is changed under the amended WIC Act.

## **2.2 The standard licence template for WIC Act licences**

In 2013, IPART made the decision to apply the standard licence template for all new WIC Act licences. Since then, the template has been used for all new licence applications and variations. From time to time the template conditions are changed to reflect outcomes of assessments and, where broadly applicable, changes to licences made by the Minister.

IPART has decided that as part of the 5-year review process, the standard IPART template will be applied to licences.

## **3 Review of licence – retail supplier's licence**

This section of the report contains an outline of the analysis conducted during our review of Aquacell's retail supplier's licence (licence number 09\_004R) and our recommendations.

### **3.1 Stakeholder consultation and submissions**

Where the outcome of an IPART 5-year review of a licence under the WIC Act, is to recommend a variation to the licence, we are required under section 17(1) of the WIC Act to consult with the licensee and other persons prescribed by the *Water Industry Competition (General) Regulation 2008 (the Regulation)*. At this time, there are no other persons prescribed in the Regulation that must be consulted for an IPART licence condition variation.



We invited submissions from Aquacell and the Metropolitan Water Directorate.

Aquacell confirmed via email that they did not have any comments or concerns regarding our proposed changes to the Aquacell retail supplier's licence.<sup>3</sup>

The Metropolitan Water Directorate did not make any comment on the proposed changes to the Aquacell retail supplier's licence.<sup>4</sup>

### 3.2 Variations to licence conditions

The Aquacell retail supplier's licence was last varied on 21 July 2014. The licence was varied at that time to reflect our retail supplier's licence template.

Since 21 July 2014, we have made two changes to the standard licence template which are relevant to the Aquacell retail supplier's licence. The changes relate to insurance, and the establishment of a code of conduct for the delineation of responsibilities for interconnections.

Following the review of insurance arrangements by the NSW Self Insurance Corporation for the Huntlee Water Pty Ltd network operator's licence (granted by the Minister on 3 March 2015), we consider it appropriate that licensees should be subject to an additional licence condition in relation to appropriate arrangements for insurance. We have updated our standard template to include a condition<sup>5</sup> which would require a report to be provided if there is a change in the insurer or underwriting panel, or a change to the type, scope or limit of insurance held by the licensee. We are also amending the Retail Supplier's Reporting Manual to include a requirement for licensees to give prior notice of changes in insurance.

Following feedback from WIC Act licensees, we recently also made a change to the standard conditions regarding delineation of responsibilities for interconnections. The amended condition requires a code of conduct be developed where a licensee's water industry infrastructure has a **connection** to any other water infrastructure.<sup>6</sup> This requirement was included in licences prior to 2013 and is less onerous than the standard condition which was included between 2013 and 2015 (including the variation to the Aquacell retail supplier's licence in 2014), that required a code of conduct where there is any other water industry infrastructure in the licences' **specified area of operations**. NSW Health supported our change.<sup>7</sup>

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<sup>3</sup> Emails to IPART, Mr Justin Taylor, Aquacell, 2 April 2015 and 10 July 2015.

<sup>4</sup> Email to IPART, Ms Alison White, Metropolitan Water Directorate, 24 March 2015.

<sup>5</sup> Schedule B, sub-clause B3.3 of the Aquacell retail supplier's licence (licence number 09\_004R).

<sup>6</sup> Schedule B, sub-clause B9.2(b) of the Aquacell retail supplier's licence (licence number 09\_004R).

<sup>7</sup> Email to IPART, Ms Leslie Jarvis, NSW Health, 13 April 2015.

In addition, due to our recommended changes to the Aquacell network operator's licence (licence number 09\_003) described in Section 4, we consider it necessary to update the references to that licence in Schedule C of the Aquacell retail supplier's licence.

## **4 Review of licence – network operator's licence**

This section of the report contains an outline of the analysis conducted during our review of Aquacell's network operator's licence (licence number 09\_003) for the 1 Bligh Street scheme and our recommendations.

### **4.1 Stakeholder consultation and submissions**

We invited submissions from Aquacell and the Metropolitan Water Directorate. We have used the submissions to inform our review.

Aquacell confirmed via email that they did not have any comments or concerns regarding our proposed changes to the Aquacell network operator's licence.<sup>8</sup>

The Metropolitan Water Directorate suggested changes to the conditions related to licensed activities for the Aquacell network operator's licence.<sup>9</sup> We have addressed their comments in the discussion below. The Metropolitan Water Directorate also provided comments on our standard licence template, the comments made were not applicable to the Aquacell network operator's licence. We are having ongoing discussions with the Metropolitan Water Directorate regarding its comments on our standard licence template and possible changes to conditions for new licences.

### **4.2 Variations to licence conditions**

The current Aquacell network operator's licence for the 1 Bligh Street scheme (licence number 09\_003) is not aligned to our standard licence template.

Our review of the Aquacell network operator's licence considered the differences between the current licence and the standard licence template. The outcomes of our review are detailed below.

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<sup>8</sup> Email to IPART, Mr Justin Taylor Aquacell, 2 April 2015.

<sup>9</sup> Email to IPART, Ms Alison White, Metropolitan Water Directorate, 24 March 2015.

## Insurance

*Relevant insurance licence conditions are prescribed in schedule B, clause B3 of the amended Aquacell network operator's licence.*

The standard licence template includes additional insurance requirements to the existing Aquacell network operator's licence. The insurance conditions of the licence reduce the risks to the licensee, customers and government. These include requirements for the licensee to provide to IPART:

- ▼ Certificates of currency for insurance.
- ▼ Provides a report if there is a change in the insurer or underwriting panel, or a change to the type, scope or limit of insurance held by the Licensee.

We are amending the Network Operator's Reporting Manual for the notification periods for provision of insurance materials to IPART, including providing a report to IPART of changes to insurance arrangements.

We consider it appropriate that licensees should be subject to the additional licence conditions in relation to appropriate arrangements for insurance.

## Compliance with audit guidelines

*Compliance with audit guidelines licence conditions are prescribed in schedule B, clause B5 of the amended Aquacell network operator's licence.*

The standard licence template includes a condition which requires the licensee to comply with any audit guidelines issued by IPART, which is not in the existing Aquacell network operator's licence.

We consider it appropriate that Aquacell should be subject to the additional licence condition in relation to compliance with audit guidelines.

## Licensed activities

*Licence conditions which differ between licences depending on the licensed activities are prescribed in schedule B, clause B7.*

The Aquacell 1 Bligh Street scheme is a non-potable water scheme.

The standard licence template has conditions which are included depending on the licensed activities, that is, whether the scheme includes potable water, non-potable water and/or sewerage services.

We note the Metropolitan Water Directorate suggested the inclusion of sewerage services conditions in the Aquacell licence in case they become relevant in the future.<sup>10</sup> Should Aquacell want to change the activities it undertakes to include the provision of sewerage services, it would need to apply for a licence variation and we could impose appropriate conditions at that point in time. Therefore, we consider the Aquacell licence should be updated to include the standard licence template conditions applicable for non-potable water licensed activities only.

### Provision of Plans

*Provision of Plans licence conditions are prescribed in schedule B, clause B9 of the amended Aquacell network operator's licence.*

The existing Aquacell network operator's licence requires that the licensee must provide IPART with a copy of its amended Plans<sup>11</sup> if it makes any change. The standard licence template requires that when a licensee makes a **significant** amendment to a Plan it provides a copy of the amended Plan to IPART. This condition manages the risk related to the operation of a scheme, but is a less onerous condition for the licensee.

We consider it appropriate that Aquacell should be subject to the standard licence template condition for the provision of Plans.

### Changes to end use

*Changes to end-use licence conditions are prescribed in schedule B, clause B11 of the amended Aquacell network operator's licence.*

The standard licence template includes a condition regarding changes to end-use. There is no equivalent condition in the existing Aquacell network operator's licence. The licence condition requires the licensee to notify IPART in writing at least three months before commencing the supply of water for an end-use which is not set out in the most recent Water Quality Plan provided to IPART. The notification period gives IPART time to review the capacity of the licensee to supply water to a new end-use. This additional condition reduces the risk that a licensee will undertake activities that it does not have the capacity to undertake and thus pose a public health risk.

We consider it appropriate that Aquacell should be subject to the standard licence template condition for notification of changes to end-use.

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<sup>10</sup> Email to IPART, Ms Alison White, Metropolitan Water Directorate, 24 March 2015.

<sup>11</sup> For the Aquacell network operator's licence the relevant Plans are the Water Quality Plan and the Infrastructure Operating Plan.

## Notification of commercial operation

*Notification of commercial operation licence conditions are prescribed in schedule B, clause B13 of the amended Aquacell network operator's licence.*

The standard licence template has conditions regarding notification of commercial operation. The conditions require the licensee to notify IPART each time it brings any of the specified water industry infrastructure into commercial operation. Notification is in accordance with the Network Operator's Reporting Manual. There are no similar conditions in the existing Aquacell network operator's licence. This additional condition reduces the risk that a licensee will undertake activities that it does not have the capacity to undertake.

We consider it appropriate that Aquacell should be subject to the standard licence template condition for notification of commercial operation.

## Greenfield scheme

*Licence conditions which differ between licences depending on whether a scheme is Greenfield or Brownfield are prescribed in schedule B, clauses B2, B10, and B13.*

When the Aquacell licence was granted, there was no distinction between conditions for Greenfield or Brownfield schemes<sup>12</sup>. The standard licence template has conditions which are included depending on whether a scheme is considered to be a Greenfield or Brownfield at the time a licence is granted.

The Aquacell 1 Bligh Street scheme was a Greenfield scheme when the licence was granted by the Minister in 2010. We consider the Aquacell licence should be updated to include the standard template's Greenfield licence conditions.

## Consistent licence terminology, language and structure

We consider the Aquacell licence should be varied to align it with the terminology, language and structure (including numbering of conditions) used in the standard licence template. This change will improve consistency across licences.

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<sup>12</sup> The term 'Greenfield scheme' refers to a scheme which at the time of application does not have any existing water industry infrastructure, for example a commercial building without a treatment plant; the term 'Brownfield scheme' refers to a scheme which at the time of application includes existing water industry infrastructure, for example a building with an existing treatment plant.

## 5 Recommendations

We recommend that the Minister:

- ▼ **Varies the Aquacell retail supplier's licence (licence number 09\_004R) and conditions imposed on that licence as set out in the attached amended licence.**
- ▼ **Varies the Aquacell network operator's licence (licence number 09\_003) and conditions imposed on that licence as set out in the attached amended licence.**

On making a decision whether or not to vary the licence, the Minister is required to provide us with notice of the decision and of the reasons for the decision.<sup>13</sup> We will then make the information in the notice available to the public on our website, in accordance with the requirements of the WIC Act.<sup>14</sup> We will also notify the licensee of the amended licences.

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<sup>13</sup> WIC Act, section 10(5).

<sup>14</sup> WIC Act, section 10(6).