



Independent Pricing and Regulatory Tribunal

5-year review of Veolia Water Australia's network operator's licence (09_001)

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

Water — Report to the Minister
July 2015



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1 Summary

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

We recommend that the Minister varies Veolia's network operator's licence for the Fairfield recycled water treatment plant (licence number 09_001) to bring it 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.¹ Veolia's network operator's licence for the Fairfield recycled water treatment plant was granted by the Minister on 8 April 2009. We commenced our 5-year review of the licence on 8 April 2014.

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.² This report summarises our analysis, issues raised by stakeholders through their submissions and our recommendation to vary the licence. It also contains the variation instrument and the proposed licence conditions.

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.

¹ WIC Act, section 85(2).

² 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 Veolia's licence consistent with the current standard licence conditions. The standard licence conditions have been developed and implemented since Veolia's licence was 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.

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 where appropriate.

3 Review of licence

This section of the report contains an outline of the analysis conducted during our review of Veolia's network operator's licence (licence number 09_001) for the Fairfield recycled water treatment plant 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 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 which must be consulted with for an IPART licence condition variation.

In addition to inviting submissions from Veolia as the licensee, we invited submissions from the Metropolitan Water Directorate and NSW Health, and we have used the submissions to inform our review.

Veolia confirmed that they did not have any comments or concerns regarding our proposed changes to the network operator's licence, with the exception of conditions related to delineation of responsibilities for interconnections and insurance. Regarding delineation of responsibilities for interconnections we consulted specifically with NSW Health. Our recommendation regarding this issue is discussed below.

The Metropolitan Water Directorate provided feedback on the drafting of the Veolia licence.³ To address those comments we made revisions to the numbering of conditions within the licence.

3.2 Variations to licence conditions

The current Veolia network operator's licence for the Fairfield recycled water treatment plant (licence number 09_001) is not aligned to our standard licence template.

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

Description of area of operations

The description of the area of operations in Veolia's existing licence includes a description of infrastructure in addition to a geographic reference. This has been changed to just a geographic reference to be consistent with the description of the area of operations in other licences.

Insurance

Relevant insurance licence conditions are prescribed in schedule B, condition B3 of the amended Veolia network operator's licence.

The standard licence template includes additional insurance requirements to the Veolia 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.
- ▼ 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.

³ Email to IPART, Ms Alison White, Metropolitan Water Directorate, 24 March 2015.

We are amending the Reporting Manual for the notification periods for provision of insurance materials to IPART, including prior notice of changes to insurance arrangements.

Veolia expressed concern regarding the changes to the insurance licence conditions, specifically the requirement to provide a report to IPART if there is a change to the insurer or underwriting panel, without any change to the type, scope or limit of insurance held.⁴ This condition was developed on advice from the NSW Self Insurance Corporation, during our assessment of a recent network operator's licence.⁵ We consider it appropriate that licensees be required to provide a report to IPART of a change to its insurer or underwriting panel, so that we can determine whether the insurance arrangements continue to be appropriate.

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

The Metropolitan Water Directorate also provided comments on our standard licence template, the comments made relate to insurance conditions for new licences, that specifies the requirement for insurance prior to construction and the timing of Insurance Expert's reports.⁶ These suggested changes are not material to the Veolia network operator's licence as Veolia's water industry infrastructure is operating and an Insurance Expert's report was previously provided as required by its licence. The comments provided by the Metropolitan Water Directorate have been noted and will be considered by IPART for future licences.

Compliance with audit guidelines

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

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

⁴ Email to IPART, Mr Alban Delpey, Veolia, 8 April 2015.

⁵ Email to IPART, Mr Wayne Chandler, SICorp, 6 February 2015.

⁶ Email to IPART, Ms Alison White, Metropolitan Water Directorate, 24 March 2015.

Licensed activities

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

The Veolia Fairfield recycled water treatment plant 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 has potable water, non-potable water and/or sewerage services.

We note the Metropolitan Water Directorate suggested the inclusion of sewerage services conditions in the Veolia licence in case they become relevant in the future.⁷ Should Veolia want to change the activities it undertakes to include the provision of sewerage services, it would need to apply for a licence variation. Therefore, we consider the Veolia 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, condition B9 of the amended Veolia network operator's licence.

The existing Veolia network operator's licence requires that the licensee must provide IPART with a copy of its amended Plans 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 Veolia should be subject to the standard licence template condition for the provision of Plans.

⁷ Email to IPART, Ms Alison White, Metropolitan Water Directorate, 24 March 2015.

Delineating responsibilities – interconnections

Delineating responsibilities licence conditions are prescribed in schedule B, condition B10 of the amended Veolia network operator's licence.

Following feedback from Veolia and another WIC Act licensee, we recently made a change to the standard conditions regarding delineation of responsibilities for interconnections. The amended condition requires a code of conduct to be developed where a licensee's water industry infrastructure has a **connection** to any other water infrastructure.⁸ This requirement was included in all licences prior to 2013 (including the Veolia licence) and is less onerous than the standard condition which was included between 2013 and 2015, 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, noting that the public health benefit of requiring licensee's to comply with the stricter condition was unclear.⁹

In the Veolia licence, we have retained the condition requiring a code of conduct be established with other licensees that are connected to the licensee's infrastructure.

Changes to end use

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

The standard licence template has a condition regarding changes to end use. 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.

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

⁸ Schedule B, condition B10.1 of the Veolia network operator's licence (licence number 09_001).

⁹ Email to IPART, Ms Leslie Jarvis, NSW Health, 13 April 2015.

Commercial operation

Notification of commercial operation licence conditions are prescribed in schedule B, condition B13 of the amended Veolia 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 Reporting Manual. There are no similar conditions in the existing Veolia 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 Veolia should be subject to the standard licence template condition for notification of changes to commercial operation.

Greenfield scheme

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

When the Veolia licence was granted, there was no distinction between conditions for Greenfield or Brownfield schemes¹⁰. The standard licence template has conditions which are included depending on whether a scheme is considered to be Greenfield or Brownfield at the time a licence is granted. These conditions relate to the timing of provision of insurance materials, notification of commercial operation and notification of new infrastructure coming into operation.

The Veolia Fairfield recycled water treatment plant was a Greenfield scheme when the licence was granted by the Minister in 2009. We consider the Veolia licence should be updated to include the standard template Greenfield licence conditions.

Consistent licence terminology, language and structure

We consider the Veolia 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.

¹⁰ 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.

4 Recommendations

We recommend that the Minister:

- ▼ **varies Veolia's network operator's licence (licence number 09_001) 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.¹¹ 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.¹² We will also notify the licensee of the amended licences.

¹¹ WIC Act, section 10(5).

¹² WIC Act, section 10(6).