



Independent Pricing and Regulatory Tribunal
New South Wales

5–year review of Orica Pty Ltd’s network operator’s licence (12_016) and retail supplier’s licence (12_017R)

Prepared under the
Water Industry Competition Act 2006 (NSW)

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Executive Summary

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

We recommend that the Minister varies Orica's network operator's licence (licence number 12_016) and retail supplier's licence (licence number 12_017R). These variations generally align Orica's network operator's and retail supplier's licences with our standardised licence templates to bring them in line with other network operator's and retail supplier's licences. We also recommend changes to the licence to:

- ▼ update the licence structure, and
- ▼ update the licence language and terminology.

Our original assessment of Orica's network operator's and retail supplier's licences had regard to the licensing principles in section 7(1) of the WIC Act. Our review revisited these principles, and resulted in the addition of a number of conditions to both licences, as well as the removal and modification of several conditions.

We sought a submission from Orica. Orica confirmed on 23 May 2017, via email, that it had no comments or concerns regarding the existing conditions of its network operator's and retail supplier's licences. The *Water Industry Competition (General) Regulation 2008* (WIC Regulation) currently does not require consultation with any persons other than the licensee.

However, we consider that this consultation did not meet the requirements under section 17(1) of the WIC Act because we consulted on the existing licences, not the proposed amendments to the licences. We did not consult on these because we consider the request should come from the Minister. Therefore, the Minister should provide a notice of the proposed action to vary the licences to the licensee and other persons as prescribed by the WIC Regulation. The licensee must be given a reasonable opportunity to make submissions on the proposed action and the Minister must consider any submissions.¹ This should occur after the Minister makes any additional changes to the proposed licences (on the advice of the Department). After this process is complete, the Minister can finalise the licence changes and sign the notices of decision.

¹ WIC Act, section 17(1)(b) and section 17(1)(c).

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1 Introduction

We review licences granted under the WIC Act at intervals of not more than five years. This is in accordance with section 85 of the WIC Act. The first review starts on the fifth anniversary of the date on which the licence was granted.² The Minister granted Orica's network operator's licence and retail supplier's licence on 23 April 2012. Neither has been varied since. We commenced our 5-year review of the licence on 23 April 2017.

This report outlines our recommendations to vary the existing licence conditions, the removal of existing licence conditions and addition of new licence conditions.³ It also summarises our analysis and our reasons for recommending changes to the licences.

1.1 Our review better aligns Orica's existing licence with the standardised conditions

The 5-year licence review allows us to consider if 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.

The 5-year licence review also allows us to reconsider licence conditions in light of emerging risks to the scheme. The review generally consists of standardising the licence conditions with other more recent licences, where we are confident that there are no new or increased risks since the Minister granted or last varied the licences. IPART developed the standardised licence conditions after the Minister granted Orica's licences in 2012. They form the basis for all new WIC Act licences, and licence variations. Applying the standardised licence conditions will:

- ▼ align the Orica licences with other recently reviewed WIC Act licences
- ▼ address any gaps in the licences
- ▼ clarify licence conditions to the licensee, and
- ▼ improve the efficiency of administering licences until the new licensing regime, under the amended WIC Act, comes into effect.

We consider that there are no significant issues that warrant varying Orica's licences further than applying the standardised network operator's and retail supplier's licence conditions.

² WIC Act, section 85(2).

³ WIC Act, section 85(3).

2 Review of network operator's licence

This section outlines our analysis for Orica's 5-year network operator's licence review.⁴ It also outlines our recommendations.

2.1 Stakeholder consultation and submissions

The Minister must consult with the licensee and any other persons prescribed in the WIC Regulation where the Minister proposes to vary the existing conditions of a licence or impose new conditions on a licence under section 15 of the WIC Act.⁵ The WIC Regulation currently does not require consultation with any persons other than the licensee.

We sought a submission from Orica on its existing licences. Orica confirmed that it had no comments or any concerns regarding the existing conditions of its network operator's and retail supplier's licences.⁶

We have not consulted with Orica on the proposed changes in accordance with section 17 of the WIC Act because we consider that the Minister must do this.

2.2 Variations to the licence conditions

The proposed network operator's licence clarifies the intent of the licence conditions and improves efficient regulation by ensuring a consistent approach across network operator's licences.

In reviewing the network operator's licence and considering amendments to the licence conditions we must have regard to the licensing principles in section 7(1) of the WIC Act. Refer to section 2.3 for an outline of how we had regard to the licensing principles.

IPART recommends that the Minister makes a number of changes to the current licence, as per the proposed licence we have attached to this report (**Appendix A**). The sections below detail the rationale and outcomes of our review.

⁴ Licence number 12_016.

⁵ WIC Act, section 15 and section 17(1).

⁶ Email to IPART, Community Relations Leader, Orica Pty Ltd, 23 May 2017.

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2.2.1 We have not proposed any material changes to Schedule A of the licence

The scope of the licence is provided in Schedule A of the current and proposed Orica network operator's licence.

The scope of the licence in the standardised network operator's licence template is provided in Sections 1, 2 and 3, as applicable. The standardised format of the licence scope varies from the current Orica licence scope which used an old template (provided in Schedule A of the current licence).

To avoid any perceived change to the scope of the current Orica licence, we recommend that the Minister retain the existing format of the Orica licence, which has the scope and Ministerially-imposed licence conditions in Schedule A. We consider that a change to the licence scope, even as an update to match the current standardised licence template, could be beyond the scope of a review of the licence conditions.

However, for consistency with the standardised network operator's licence conditions, we recommend replacing particular terms in the scope (as it appears in Schedule A) with terminology used throughout the conditions such as changing 'licence holder' to 'licensee'. These are not material changes and they do not change the scope of the licence. We also recommend relocating the Interpretation/Definitions section at the end of Schedule A in the current licence to a new Schedule C in the proposed licence.

2.2.2 We have proposed changes to Schedule B of the licence

The proposed changes primarily update the standard licence conditions to the new template and are detailed below.

Ongoing capacity to operate

Schedule B, condition 1 (condition B1 in the current Orica licence) of the proposed Orica network operator's licence prescribes the requirements for licensees to have the ongoing capacity to operate.

Orica's current licence requires it to report to IPART immediately if it ceases to have capacity to carry out the activities authorised by its network operator's licence. We recommend amending the existing condition B1 for consistency with the corresponding standardised licence condition. The amended licence condition will require Orica to report to IPART "in accordance with the Reporting Manual" if it ceases to have the capacity.

Insurance

Schedule B, condition 2 of the proposed Orica network operator's licence prescribes the Insurance licence conditions (conditions B2 and B3 in the current Orica licence).

Orica's licence currently requires Orica to obtain and maintain appropriate insurances for the size and nature of the activities that it is licensed to carry out. It also requires Orica to provide us with a report certifying that the insurances are appropriate.

The recommended licence combines and consolidates insurance requirements previously specified in conditions B2 and B3 of the existing Orica network operator's licence. This brings Orica's proposed licence in line with the standardised licence conditions and other WIC Act network operator's licences.

The new licence condition requires the licensee to hold insurances appropriate for the size and nature of activities that the Licensee is **carrying out**, and not all activities authorised by the licence.

As a result of this change, the licence no longer specifies that the licensee must hold insurances that are "...appropriate for the size and nature of the activities authorised" under the Licences on the date that the licence is granted.

Also, Condition 2.2 now requires the licensee to provide us with certificates of currency in accordance with the Reporting Manual.⁷

We consider that the clarification of these insurance requirements reduces the risks of adverse impacts to the licensee, customers and the Government.

We have not proposed to include condition 2.3 from the current standardised licence conditions as it only applies to greenfield schemes (ie. schemes that are yet to be constructed). The Orica scheme is a brownfield scheme.

In recommending a change to this condition we have had regard to the licensing principles for the protection of consumers and the ensuring of sustainability of water resources.

Compliance with Audit Guidelines

Schedule B, condition 4 of the proposed Orica network operator's licence prescribes "Compliance with audit guidelines".

We recommend adding this new licence condition to bring Orica's proposed licence in line with our standardised licence conditions, and other recent network operator's licences. Orica's current licence does not include a requirement for the licensee to comply with IPART's Audit Guidelines. We consider including this condition provides both the licensee and IPART clarity regarding which auditing framework the licensee must comply with.

In recommending a change to this condition we have had regard to the licensing principles for the protection of public health and public safety and ensuring the sustainability of water resources.

Reporting of information in relation to the Register of Licences

Schedule B condition 6 (condition B6 in the current Orica licence) of the proposed Orica network operator's licence prescribes the Notification obligations in relation to the Register of Licences.

⁷ IPART, *Network Operator's Reporting Manual*, June 2016, Rev 5, section 2.6.2, page 7 and IPART, *Retail Supplier's Reporting Manual*, June 2016 Rev 3, section 2.6.2, page 7

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Section 20 of the WIC Act and condition 18 of the WIC Regulation requires us to maintain a register of licences. The WIC Regulation outlines the details we are required to keep. Orica's existing licence requires it to provide us with information, within 14 days, where there is a change which may affect the register of licences.

We have restructured this condition (condition B6 in the current Orica licence) to bring Orica's proposed licence in line with the standardised licence conditions and other recent network operator's licences. In particular, we have:

- ▼ reworded B6.1(a), (b) and (c), and
- ▼ added B6.1(d), as per our standardised licence conditions and required by condition 18(2)(b) of the WIC Regulation.

The restructured condition B6 provides Orica with additional clarity regarding which changes require it to notify IPART, and the manner and form of the notification.

In recommending a change to this condition we have had regard to the licensing principle for the ensuring of sustainability of water resources.

Monitoring

Schedule B, condition 7 (condition B7 in the current Orica licence) of the proposed Orica network operator's licence prescribes the licensee's monitoring requirements.

We recommend restructuring the current condition for clarity and it is now consistent with the corresponding standardised licence condition.

Provision of a copy of Plans

We recommend removing licence condition B8 in Schedule A "The Provision of copy of Plans" from the existing Orica licence.

The current Orica licence includes a condition that directs licensees to provide us with a copy of their licence plans whenever they make a significant change to the plans. We want to ensure the auditor is reviewing the most up to date plans whenever the licensee is audited.

We recommend removing this condition from the licence as we consider it is more appropriate for this requirement to be stated in our Audit Guidelines. We will update our audit guidelines accordingly.

Delineating responsibilities

Schedule B, condition 8 (condition B9 in the current Orica licence) of the proposed Orica network operator's licence prescribes the requirements for Codes of Conduct and the delineation of responsibilities.

Orica's current licence (condition B9) requires the licensee to establish a Code of Conduct between it and relevant network operators, retail suppliers and/or public water utilities.

We recommend updating this condition to bring it in line with the corresponding standardised licence condition. We consider that the standardised licence condition better clarifies the responsibilities of the licensee and any other connected entity.

Notification of changes to end-use

Schedule B, condition 9 (condition B10 in the existing Orica licence) of the proposed Orica network operator's licence prescribes the notification obligations in relation to changes to the end use of non-potable water.

We recommend minor wording amendments to the current condition to be consistent with the corresponding standardised licence condition in other network operators' licences.

Notification of commercial operation

Schedule B, condition 10 of the varied Orica network operator's licence prescribes the notification obligations in relation to the commencement of commercial operation of infrastructure.

We recommend adding this condition to require the licensee to inform us when it brings 'new' Specified Water Industry Infrastructure (as defined in the licence) into commercial operation. This condition requires Orica to notify IPART within 10 days of bringing any Specified Water Industry Infrastructure into commercial operation. Orica's current licence does not include a similar requirement.

Once notified of commercial operation, we can prepare and schedule the next operational audit. Several conditions in the WIC Regulation require specific actions to be undertaken prior to commercial operation. The date of commencement of commercial operation is essential in determining when these legislative requirements are triggered.

In recommending this new condition we have had regard to the licensing principles for the protection of public health, safety and consumers.

Notification of non-compliant Plumbing

Schedule B, condition 11 of the proposed Orica network operator's licence prescribes the notification obligations in relation to non-compliant Plumbing.

We recommend adding this new condition to Orica's proposed licence. This condition requires Orica to notify the customer and the Plumbing Regulator within 10 days of becoming aware that a customer's plumbing does not comply with the plumbing code. Orica's existing licence does not include such a requirement.

We consider that including this condition reduces risks of adverse impacts to the licensee, and its customers resulting from improper and illegal plumbing connections.

This licence condition brings Orica's proposed licence in line with other network operators' licences.

In recommending this new condition we have had regard to the licensing principle for the protection of public health, public safety and consumers generally.

Consistent terminology, language and structure

Terminology, language and structure are updated throughout the licence.

We recommend amending the terminology, language and structure of Orica's licence to align it with the standardised network operator's licence conditions. This also brings Orica's licence in line with other more recent network operator's licences. The changes include:

- ▼ Amending the licence structure to bring the numbering of licence conditions in line with the standard licence conditions template.
- ▼ Updating the interpretations and definitions sections at the end of Schedule A and Schedule B in the current licence and relocating them to a new Schedule C at the end of the proposed licence, consistent with the standardised licence conditions format.
- ▼ Reviewing the terminology and language in the licence to bring it in line with the standardised licence conditions.

2.3 We had regard to the licensing principles in the WIC Act

We recommend adding the following conditions:

- ▼ B4 (Complying with Audit Guidelines)
- ▼ B10 (Notification of commercial operation), and
- ▼ B11 (Notification of non-compliant plumbing)

to the network operator's licence, and amending the other conditions in Schedule B, to better align with our standardised licence template. In recommending these changes we 'had regard to the licensing principles' in section 7 of the WIC Act.

The new and amended conditions have regard to the licensing principles by providing:

- ▼ Better protection of public health and public safety (clear requirements for meeting plumbing standards, commercial operation requirements and auditing).
- ▼ Better protection of consumers (clear plumbing and safety standards).
- ▼ Ensuring the sustainability of water resources (clearer auditing and reporting requirements for licensees, clearer requirements for maintaining insurance).

3 Review of retail supplier's licence

This section outlines our analysis for Orica's 5-year retail supplier's licence review.⁸ It also outlines our recommendations

3.1 Stakeholder consultation and submissions

The Minister must consult with the licensee and any other persons prescribed in the WIC Regulation where the Minister proposes to vary the existing conditions of a licence or impose new conditions on a licence under section 15 of the WIC Act.⁹ The WIC Regulation currently does not require consultation with any persons other than the licensee.

We sought a submission from Orica. Orica confirmed that it had no comments or any concerns regarding the existing conditions of its network operator's and retail supplier's licences.¹⁰

We have not consulted with Orica on the proposed changes in accordance with section 17 of the WIC Act because we consider that the Minister must do this.

3.2 Variations to the licence conditions

The proposed retail supplier's licence clarifies the intent of licence conditions and improves efficient regulation by ensuring a consistent approach across retail supplier's licences.

In reviewing the retail supplier's licence and considering amendments to the licence conditions we must have regard to the licensing principles in section 7(1) of the WIC Act. Refer to section 3.3 for an outline of how we had regard to the licensing principles.

IPART recommends that the Minister makes a number of variations to the current licence, as per the modified licence we have attached to this report (**Appendix B**). The sections below detail the rationale and outcomes of our review.

⁸ Licence number 12_017R.

⁹ WIC Act, section 15 and section 17(1).

¹⁰ Email to IPART, Community Relations Leader, Orica Pty Ltd, 23 May 2017.

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3.2.1 We have not proposed any material changes to Schedule A of the licence

The scope of the licence is provided in Schedule A of the current and proposed Orica retail supplier's licence.

The scope of the licence in the standardised retail supplier's licence template is provided in Sections 1, 2 and 3, as applicable. The standardised format of the licence scope varies from the current Orica licence scope which used an old template (provided in Schedule A of the current licence).

To avoid any perceived change to the scope of the current Orica licence, we recommend that the Minister retain the existing format of the Orica licence, which has the scope and Ministerially-imposed licence conditions in Schedule A. We consider that a change to the licence scope, even as an update to match the current standardised licence template, could be beyond the scope of a review of the licence conditions.

However, for consistency with the standardised retail supplier's licence conditions, we recommend replacing particular terms in the scope (as it appears in Schedule A) with terminology used throughout the conditions such as changing licence holder to licensee. These are not material changes and therefore do not change the scope of the licence. We also recommend relocating the Interpretation/Definitions section at the end of Schedule A in the current licence to a new Schedule C in the proposed licence.

3.2.2 We have proposed changes to Schedule B of the licence

The proposed changes primarily update the standard licence conditions to the new template and are detailed below.

Ongoing capacity to operate

Schedule B, condition 1 (condition B1 in the current Orica licence) of the proposed Orica retail supplier's licence prescribe the requirements for licensees to have the ongoing capacity to operate.

Orica's current licence requires it to report to IPART immediately if it ceases to have capacity to carry out the activities authorised by its retail supplier's licence. We recommend amending the existing condition B1 for consistency with the corresponding standardised licence condition. The amended licence condition will require Orica to report to IPART "in accordance with the Reporting Manual" if it ceases to have the capacity.

Insurance

Schedule B, condition 2 (conditions B2 and B3 in the current Orica licence) of the proposed Orica retail supplier's licence prescribe the Insurance licence conditions.

Orica's licence currently requires Orica to obtain and maintain appropriate insurances for the size and nature of the activities that it is licensed to carry out. It also requires Orica to provide us with a report certifying that the insurances are appropriate.

The recommended licence combines and consolidates insurance requirements previously specified in conditions B2 and B3 of the existing Orica retail supplier's licence. This brings Orica's proposed licence in line with the standardised licence conditions and other WIC Act retail supplier's licences.

The new licence condition requires the licensee to hold insurances appropriate for the size and nature of activities that the Licensee is **carrying out**, and not all activities authorised by the licence.

As a result of this change, the licence no longer specifies that the licensee must hold insurances that are "...appropriate for the size and nature of the activities authorised" under the Licences on the date that the licence is granted.

Also, Condition 2.2 now requires the licensee to provide us with certificates of currency in accordance with the Reporting Manual.

We consider that the clarification of these insurance requirements reduces the risks of adverse impacts to the licensee, customers and the Government.

We have not proposed to include condition 2.3 from the standardised licence conditions as it only applies to greenfield schemes (ie. schemes that are yet to be constructed). The Orica scheme is a brownfield scheme.

Compliance with audit guidelines

Schedule B, condition 4 of the proposed Orica retail supplier's licence prescribe "Compliance with audit guidelines".

We recommend adding this new licence condition to bring Orica's proposed licence in line with our standardised licence conditions, and other recent retail operator's licences. Orica's current licence does not include a requirement for the licensee to comply with IPART's Audit Guidelines. We consider including this condition provides both the licensee and IPART clarity regarding which auditing framework the licensee must comply with.

In recommending this new condition we have had regard to the licensing principles for the protection of public health and public safety and the encouragement of competition.

Reporting of information in relation to the Register of Licences

Reporting obligations in relation to the Register of Licences are prescribed in schedule B condition 6 (condition B6 in the current Orica licence) of the varied Orica retail supplier's licence.

Section 20 of the WIC Act and condition 18 of the WIC Regulation require us to maintain a register of licences. The WIC Regulation outlines the details we are required to keep. Orica's current licence requires Orica to provide us with information, within 14 days, where there is any change that may affect the register of licences.

We have restructured this condition (condition B6 in the current Orica licence) to bring Orica's proposed licence in line with the standardised licence conditions and other recent retail supplier's licences. In particular, we have:

- ▼ reworded B 6.1(a), (b), (c), and
- ▼ added B6.1(d), as per our standardised licence conditions and required by condition 18(2)(b) of the WIC Regulation.

The restructured condition B6 now provides Orica with additional clarity regarding which changes require it to notify IPART, and the manner and form of the notification.

In recommending a change to this condition we have had regard to the licensing principle for the encouragement of competition.

Provision of a copy of Plans

We recommend removing the condition "Provision of copy of Plans", licence condition B7 in Schedule A of the current Orica retail supplier's licence.

The current Orica licence includes a condition that directs licensees to provide us with a copy of their licence plans whenever they make a significant change to the plans. We want to ensure the auditor is reviewing the most up to date plans whenever the licensee is audited.

We recommend removing this condition from the licence as we consider it is more appropriate for this requirement to be stated in our Audit Guidelines. We will update our audit guidelines accordingly.

Delineating responsibilities

Schedule B, condition 7 of the proposed Orica retail supplier's licence prescribes the requirements of Codes of Conduct and delineation of responsibilities.

We recommend adding a new condition 7 to align the proposed licence with the standardised licence conditions.

We consider that the standardised licence condition clarifies the responsibilities of the licensee and any other connected entity.

Condition 7.2 pertains to greenfield schemes and is therefore not applicable to the Orica scheme, which is a brownfield scheme.

In recommending this new condition we have had regard to the licensing principles for the protection of consumers generally.

Infrastructure to be used

Schedule B, condition 8 (condition B8 in the existing Orica licence) of the proposed Orica retail supplier's licence prescribe the provisions for the sourcing and supply of water.

We recommend adding this new condition 8 to align the proposed licence with the standardised licence conditions. This condition also provides a greater degree of confidence that the water supplied is fit for purpose, and accords with the licence.

Condition 8.2 relates to the provision of sewerage services and is therefore not applicable to the Orica recycled water scheme.

Sufficient quantities

The Sufficient quantities licence condition B8 in Schedule A of the current Orica retail supplier's licence has been removed.

This current condition applies to licences where licensees retail drinking water to customers. As the Orica scheme provides only non-potable water to its customers, the condition is not applicable and has been removed.

Notification of supply of water or provision of sewerage services

Schedule B, condition 9 of the proposed Orica retail supplier's licence prescribes the notification obligations in relation to the supply of water or provision of sewerage services.

We recommend adding this new condition 9 to align the proposed licence with the standardised licence conditions. If we were to receive notification under this condition we would consider whether to schedule an operational audit.

Consistent terminology, language and structure

We recommend amending the terminology, language and structure of Orica's licence to align it with the standardised licence template. This also brings Orica's licence in line with other most recent retail supplier's licences. The changes include:

- ▼ Amending the licence structure to bring the numbering of licence conditions in line with the standardised licence conditions.
- ▼ Updating the interpretations and definitions sections at the end of Schedule A and Schedule B in the current licence and relocating them to a new Schedule C at the end of the proposed licence, consistent with the standard licence format.
- ▼ Reviewing the terminology and language in the licence to bring it in line with the standardised licence conditions.

3.3 We had regard to the licensing principles in the WIC Act

We recommend adding the following conditions:

- ▼ B4 (Complying with Audit Guidelines)
- ▼ B7 (Delineating responsibilities)
- ▼ B8 (Infrastructure to be used), and
- ▼ B9 (Notification of supply of water or provision of sewerage services)

to the retail supplier's licence, and amending the other conditions in Schedule B, to better align with our standardised licence template. In recommending these changes we 'had regard to the licensing principles' in section 7 of the WIC Act.

The new and amended conditions have regard to the licensing principles by providing:

- ▼ Better protection of public health and public safety (clear requirements regarding compliance and auditing).
- ▼ Better protection of consumers (delineation of responsibilities and meeting code of conduct requirements).
- ▼ Encouragement of competition (clearer auditing and reporting requirements for licensees).

4 Future changes

4.1 Orica is unlikely to require a licence under the amended WIC Act

The *Water Industry Competition Amendment (Review) Act 2014* (Amending WIC Act) will result in significant changes to the WIC Act licensing framework and conditions of consent. The Amending WIC Act includes a changed scope for schemes that will require a licence and provisions to transition relevant schemes to the new framework where appropriate.

We recommend minimal changes to bring Orica's proposed licences in line with the standardised licence conditions. We consider this is appropriate given the impending changes to the WIC Act and licensing regime and the likelihood that Orica will no longer require licences for its scheme under the new legislation, when it comes into force.¹¹

¹¹ *Water Industry Competition Amendment (Review) Act 2014* (NSW), expected to come into force in September 2019.

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5 Recommendations

We recommend that the Minister for Energy and Utilities:

- 1 Consult with Orica regarding proposed changes to its network operator's licence and its retail supplier's licence.
- 2 Subject to considering Orica's submission on the proposed changes, vary the conditions of Orica's network operator's licence (licence no. 12_016) in accordance with IPART's recommendations (**Attachment A**).
- 3 Subject to considering Orica's submission on the proposed changes, vary the conditions of Orica's retail supplier's licence (licence no. 12_017R) in accordance with IPART's recommendations (**Attachment B**).

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 licences or otherwise, the Minister may provide us 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 licences.

Glossary

Audit Guidelines	means the document titled “ <i>Audit Guideline – Water Industry Competition Act 2006</i> ”, which is prepared by IPART and is available on IPART’s website at www.ipart.nsw.gov.au , and any other guidelines issued by IPART in relation to audits under the Act.
Brownfield schemes	Brownfield schemes are those that use existing infrastructure. The Regulation considers “new infrastructure” to include any water or sewerage infrastructure that began construction after 8 August 2008. Any infrastructure that was in existence, or began construction, prior to this date is considered to be “existing infrastructure”. Brownfield schemes will also include infrastructure that has been granted transitional licensing arrangements until 30 June 2014 under Condition 19A of the Regulation.
Greenfield schemes	Greenfield schemes are those that use new infrastructure. The Regulation considers “new infrastructure” to include any water or sewerage infrastructure that began construction after 8 August 2008. Any infrastructure that was in existence, or began construction, prior to this date is considered to be ‘existing infrastructure’. Existing infrastructure will also include infrastructure that may have been built under transitional licensing arrangements, granted until 30 June 2014, under Condition 19A of the Regulation.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means network operator’s licence or retail supplier’s licence, as applicable, granted under section 10 of the Act.
Licensee	means Orica Pty Ltd (ACN 004 117 828)

Minister	means the Minister responsible for Part 2 of the <i>Water Industry Competition Act 2006</i> (NSW)..
Plan	means any infrastructure operating plan, water quality plan or sewage management plan that the Licensee is required to prepare under the Regulation.
Plumbing	means any pipe, fitting or apparatus that is situated: <ul style="list-style-type: none"> a) downstream of the customer's connection point to a water main, where the water main is Specified Water Industry Infrastructure; b) upstream of a customer's connection point to a sewer main, where the sewer main is Specified Water Industry Infrastructure; or c) upstream of a customer's connection point to a stormwater drain, where the stormwater drain is Specified Water Industry Infrastructure.
Plumbing Regulator	has the meaning given to that term under section 3 of the <i>Plumbing and Drainage Act 2011</i> (NSW).
Register of Licences	has the meaning given to that term under section 20 of the <i>Water Industry Competition Act 2006</i> (NSW).
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).
Reporting Manual	means the respective documents titled <ul style="list-style-type: none"> 1) "Network Operator's Reporting Manual", and 2) "Retail Supplier's Reporting Manual", <p>which are prepared by IPART and are available on IPART's website at www.ipart.nsw.gov.au.</p>
Specified Water Industry Infrastructure	means the water industry infrastructure specified in Table 2, Schedule A of Orica's "Network Operator's Licence" and it's "Retail Supplier's Licence".



Appendices



A Proposed network operator's licence



NEW SOUTH WALES GOVERNMENT

Water Industry Competition Act 2006 (NSW)

Network operator's licence

Licence no. 12_016

Orica Pty Ltd

(ACN 004 117 828)

SCHEDULE A – SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

This schedule sets out the licence conditions which the Minister has determined to impose pursuant to section 13(1)(b) of the *Water Industry Competition Act 2006*. In addition to these Ministerially-imposed licence conditions, Licensees are subject to obligations imposed by the Act, the Regulation and the standard Ministerially-imposed licence conditions set out in Schedule B. Licensees are encouraged to obtain independent advice as to the conditions and obligations of their licence. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the Act or the Regulation.

A1 Activities authorised

This Licence authorises the Licensee and the persons specified in Table 1 to construct, operate and maintain the water industry infrastructure specified in Table 2 for the purposes as specified in Table 3 within the area specified in Table 4, subject to the conditions imposed by or under the Act, the Regulation and this Licence.

Table 1 Authorised persons

Not Applicable

Table 2 Specified water industry infrastructure

Infrastructure used for the extraction, treatment, filtration, storage, conveyance or reticulation of non-potable water only from a groundwater source.

Table 3 Authorised purposes

Cooling Tower makeup
Industrial processes

Table 4 Specified area of operations

The City of Botany Bay Local Government Area

SCHEDULE B – GENERAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

1. Ongoing capacity to operate

- 1.1. The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART in accordance with the Reporting Manual.

2. Maintaining appropriate insurance

- 2.1. 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.
- 2.2. 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.
- 2.3. [Not applicable]
- 2.4. The Licensee must, within 6 months of the date that this Licence is granted or by a later date specified by IPART (if any), demonstrate that the insurance held is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence, by providing a report to IPART from an Insurance Expert that:
- 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 the activities that the Licensee is carrying out under this Licence; and
 - b) is in the form prescribed by the Reporting Manual.
- 2.5. 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:
- a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or
 - b) the type, scope or limit on the amount of insurance held by the Licensee.
- 2.6. 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.

[Note: The circumstances in which IPART may request a report under clause 2.6 include (but are not limited to) the following:

- 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;*
- where there is a change in the type or extent of activities authorised by this Licence; or*
- 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.]*

3. Complying with NSW Health requirements

- 3.1. The Licensee must carry out the activities authorised by this Licence in compliance with any requirements of NSW Health that:
- a) IPART has agreed to; and
 - b) are notified from time to time to the Licensee by IPART in writing.

4. Complying with Audit Guidelines

- 4.1. The Licensee must comply with any Audit Guidelines issued by IPART.

5. Reporting in accordance with the Reporting Manual

- 5.1. The Licensee must prepare and submit reports in accordance with the Reporting Manual.

6. Reporting information in relation to the register of licences

- 6.1. 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:
- a) any source from which the water handled by the Specified Water Industry Infrastructure is derived;
 - 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;

- c) any other water infrastructure to which the Specified Water Industry Infrastructure is connected;
- d) in the case of non-potable water, the authorised purposes for that water;
- e) [Not applicable]
- f) [Not applicable]
- g) [Not applicable]

7. Monitoring

- 7.1. The Licensee must undertake any monitoring that is required for the purposes of this Licence, any Plan, the Act or the Regulation in accordance with this clause 7.
- 7.2. The Licensee must keep the following records of any samples taken for monitoring purposes specified in the Water Quality Plan:
 - a) the date on which the sample was taken;
 - b) the time at which the sample was collected;
 - c) the point or location at which the sample was taken; and
 - d) the chain of custody of the sample (if applicable).
- 7.3. The Licensee must ensure that analyses of all samples taken for the purposes of Verification Monitoring are carried out by a laboratory accredited for the specified tests by an independent body that is acceptable to NSW Health, such as the National Association of Testing Authorities or an equivalent body.

8. Delineating responsibilities

- 8.1. 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.
- 8.2. [Not applicable]
- 8.3. Within 6 months of the date on which this Licence is granted or by a later date specified by IPART (if any), the Licensee's Code of Conduct must be agreed in writing between:
 - a) the Licensee; and
 - b) each licensed network operator, licensed retail supplier and/or public water utility that:
 - i) supplies water or provides sewerage services by means of any water industry infrastructure that is connected to the Specified Water Industry Infrastructure; or

- ii) constructs, maintains or operates any water industry infrastructure that is connected to the Specified Water Industry Infrastructure.

8.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 8.3 by, at a minimum, providing for:

- 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;
- b) who is responsible for water quality;
- c) who is liable in the event of the unavailability of water;
- d) who is liable in the event of failure of any water industry infrastructure;
- e) the fees and charges payable in respect of the use of the water industry infrastructure; and
- f) who is responsible for handling customer complaints.

8.5. 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.

9. Notification of changes to end-use

9.1. 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.

10. Notification of commercial operation

10.1. Each time the Licensee has brought any new Specified Water Industry Infrastructure into commercial operation, the Licensee must:

- a) notify IPART in accordance with the Reporting Manual that it has brought the relevant Specified Water Industry Infrastructure into commercial operation; and
- b) provide such notification within 10 days after it has brought the relevant Specified Water Industry Infrastructure into commercial operation.

11. Notification of non-compliant Plumbing

11.1. 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.

SCHEDULE C – INTERPRETATION AND DEFINITIONS

1. Interpretation

1.1. In this Licence, unless the context requires otherwise:

- a) the singular includes the plural and vice versa;
- b) headings are used for convenience only and do not affect the interpretation of this Licence;
- c) a reference to a document includes the document as modified from time to time and any document replacing it;
- d) a reference to a “person” includes a natural person and any body or entity whether incorporated or not;
- e) a reference to a clause is to a clause in this Licence;
- f) a reference to a section is to a section in this Licence;
- g) a reference to a schedule is to a schedule to this Licence;
- h) a reference to a law or statute includes regulations, rules, codes and other instruments under it, and consolidations, amendments, re-enactments or replacements of them; and
- i) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

2. Definitions

2.1. Expressions used in this Licence that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

2.2. In this Licence:

Act means the Water Industry Competition Act 2006 (NSW).

Audit Guidelines means an authorised purpose listed in Table 3 of Schedule A

Authorised Person means the Authorised Persons specified in Table 1 of Schedule A

Authorised Purpose means an authorised purpose listed in Table 3 of Schedule A

Code Compliant	has the meaning given to that term under section 7 of the <i>Plumbing and Drainage Act 2011</i> (NSW).
Insurance Expert	means an insurance broker which holds an Australian financial services licence under Part 7.6 of the <i>Corporations Act 2001</i> (Cth) that authorises the broker to provide financial product advice for, and deal in, contracts of insurance within the meaning of Chapter 7 of that Act.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means this network operator's licence granted under section 10 of the Act.
Licensee	means Orica Pty Ltd (ACN 004 117 828)
Licensee's Code of Conduct	has the meaning given in Schedule B, clause 8.1.
Minister	means the Minister responsible for Part 2 of the Act.
NSW Health	means the Water Unit of NSW Ministry of Health and any of the local health districts as defined by the NSW Ministry of Health.
Plan	means any infrastructure operating plan, water quality plan or sewage management plan that the Licensee is required to prepare under the Regulation.

Plumbing	<p>means any pipe, fitting or apparatus that is situated:</p> <ul style="list-style-type: none"> a) downstream of the customer's connection point to a water main, where the water main is Specified Water Industry Infrastructure; b) upstream of a customer's connection point to a sewer main, where the sewer main is Specified Water Industry Infrastructure; or c) upstream of a customer's connection point to a stormwater drain, where the stormwater drain is Specified Water Industry Infrastructure.
Plumbing Regulator	has the meaning given to that term under section 3 of the <i>Plumbing and Drainage Act 2011</i> (NSW).
Regulation	means the Water Industry Competition (General) Regulation 2008 (NSW).
Reporting Manual	means the document titled "Network Operator's Reporting Manual", which is prepared by IPART and is available on IPART's website at www.ipart.nsw.gov.au .
Specified Area of Operations	means the area of operations specified in Table 4 of Schedule A
Specified Water Industry Infrastructure	means the water industry infrastructure specified in Table 2, Schedule A
Verification Monitoring	means verification monitoring as described in the document titled " <i>Australian Drinking Water Guidelines</i> " or the document titled " <i>Australian Guidelines for Water Recycling</i> " as the case may be.
Water Quality Plan	means the water quality plan that the Licensee is required to prepare under the Regulation.

B Proposed retail supplier's licence



NEW SOUTH WALES GOVERNMENT

Water Industry Competition Act 2006 (NSW)

Retail Supplier's licence

Licence no. 12_017R

Orica Pty Ltd

(ACN 004 117 828)

SCHEDULE A – SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

This schedule sets out the licence conditions which the Minister has determined to impose pursuant to section 13(1)(b) of the *Water Industry Competition Act 2006*. In addition to these Ministerially-imposed licence conditions, Licensees are subject to obligations imposed by the Act, the Regulation and the standard Ministerially-imposed licence conditions set out in Schedule B. Licensees are encouraged to obtain independent advice as to the conditions and obligations of their licence. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the Act or the Regulation.

A1 Activities authorised

This Licence authorises the Licensee and the persons specified in Table 1 to supply water by means of water industry infrastructure specified in Table 2 for the purposes as specified in Table 3, to the persons or classes of persons specified in Table 4, within the area specified in Table 5, subject to the conditions imposed by or under the Act, the Regulation and this Licence.

Table 1 Authorised persons

Not Applicable

Table 2 Specified water industry infrastructure

Infrastructure used for the extraction, treatment, filtration, storage, conveyance or reticulation of non-potable water only from a groundwater source.

Table 3 Authorised purposes

Cooling Tower makeup industrial processes

Table 4 Specified persons or classes of persons

Any person other than a Small Retail Customer

Table 5 Specified area of operations

The City of Botany Bay Local Government Area

SCHEDULE B – GENERAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

1. Ongoing capacity to operate

- 1.1. The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART in accordance with the Reporting Manual.

2. Maintaining appropriate insurance

- 2.1. 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.
- 2.2. 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.
- 2.3. [Not applicable]
- 2.4. The Licensee must:
- a) within 6 months of the date that this Licence is granted or by a later date specified by IPART (if any) demonstrate that the insurance held is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence by providing a report to IPART from an Insurance Expert that:
 - i) 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 the activities that the Licensee is carrying out under this Licence; and
 - ii) is in the form prescribed by the Reporting Manual.
- 2.5. 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:
- a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or
 - b) the type, scope or limit on the amount of insurance held by the Licensee.
- 2.6. 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.

[Note: The circumstances in which IPART may request a report under clause 2.6 include (but are not limited to) the following:

- *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;*
- *where there is a change in the type or extent of activities authorised by this Licence; or*
- *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.]*

3. Complying with NSW Health requirements

- 3.1. The Licensee must carry out the activities authorised by this Licence in compliance with any requirements of NSW Health that:
- a) IPART has agreed to; and
 - b) are notified from time to time to the Licensee by IPART in writing.

4. Complying with Audit Guidelines

- 4.1. The Licensee must comply with any Audit Guidelines issued by IPART.

5. Reporting in accordance with the Reporting Manual

- 5.1. The Licensee must prepare and submit reports in accordance with the Reporting Manual.

6. Reporting information in relation to the register of licences

- 6.1. 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:
- a) any licensed network operator or public water utility from whose water industry infrastructure the Licensee supplies water to its customers;

- b) any source from which the water handled by the water industry infrastructure referred to in clause 6.1a) is derived;
- c) whether or not any of the Licensee's customers are Small Retail Customers;
- d) any order under section 54 of the Act by which the Licensee is declared to be a retailer of last resort; and
- e) [Not applicable]
- f) [Not applicable]
- g) [Not applicable]

7. Delineating responsibilities

- 7.1. 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.
- 7.2. [Not applicable]
- 7.3. Within 6 months of the date on which this Licence is granted or by a later date specified by IPART (if any), the Licensee's Code of Conduct must be agreed in writing between:
 - a) the Licensee; and
 - b) each licensed network operator, licensed retail supplier and/or public water utility that:
 - i) supplies water or provides sewerage services by means of any water industry infrastructure that is connected to the Specified Water Industry Infrastructure; or
 - ii) constructs, maintains or operates any water industry infrastructure that is connected to the Specified Water Industry Infrastructure.
- 7.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 8.3 by, at a minimum, providing for:
 - 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;
 - b) who is responsible for water quality;
 - c) who is liable in the event of the unavailability of water;
 - d) who is liable in the event of failure of any water industry infrastructure;
 - e) the fees and charges payable in respect of the use of the water industry infrastructure; and
 - f) who is responsible for handling customer complaints.

- 7.5. 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.

8. Infrastructure to be used

- 8.1. The Licensee must only source and supply water by means of water industry infrastructure, if that water industry infrastructure is maintained and operated by a licensed network operator or public water utility.

- 8.2. [Not applicable]

9. Notification of supply of water or provision of sewerage services

- 9.1. [Not applicable]

- 9.2. [Not applicable]

SCHEDULE C – INTERPRETATION AND DEFINITIONS

1. Interpretation

1.1. In this Licence, unless the context requires otherwise:

- a) the singular includes the plural and vice versa;
- b) headings are used for convenience only and do not affect the interpretation of this Licence;
- c) a reference to a document includes the document as modified from time to time and any document replacing it;
- d) a reference to a “person” includes a natural person and any body or entity whether incorporated or not;
- e) a reference to a clause is to a clause in this Licence;
- f) a reference to a section is to a section in this Licence;
- g) a reference to a schedule is to a schedule to this Licence;
- h) a reference to a law or statute includes regulations, rules, codes and other instruments under it, and consolidations, amendments, re-enactments or replacements of them; and
- i) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

2. Definitions

2.1. Expressions used in this Licence that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

2.2. In this Licence:

Act means the Water Industry Competition Act 2006 (NSW).

Audit Guidelines means the document titled “*Audit Guideline – Water Industry Competition Act 2006*”, which is prepared by IPART and is available on IPART’s website at www.ipart.nsw.gov.au, and any other guidelines issued by IPART in relation to audits under the Act.

Authorised Person means the Authorised Persons specified in Table 1 of Schedule A

Authorised Purpose means an authorised purpose listed in Table 3 of Schedule A

Insurance Expert	means an insurance broker which holds an Australian financial services licence under Part 7.6 of the <i>Corporations Act 2001</i> (Cth) that authorises the broker to provide financial product advice for, and deal in, contracts of insurance within the meaning of Chapter 7 of that Act.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means this retail supplier's licence granted under section 10 of the Act.
Licensee	means Orica Pty Ltd (ACN 004 117 828)
Licensed Water Industry Infrastructure	means the water industry infrastructure by means of which the non-potable water, drinking water and/or sewerage services (as applicable) under this Licence are supplied.
Licensee's Code of Conduct	has the meaning given in Schedule B, clause 7.1.
Minister	means the Minister responsible for Part 2 of the Act.
NSW Health	means the Water Unit of NSW Ministry of Health and any of the local health districts as defined by the NSW Ministry of Health.
Regulation	means the Water Industry Competition (General) Regulation 2008 (NSW).
Reporting Manual	means the document titled "Retail Supplier's Reporting Manual", which is prepared by IPART and is available on IPART's website at www.ipart.nsw.gov.au .
Small Retail Customer	has the meaning given to that term in the Regulation.

Specified Area of Operations means the area of operations specified in Table 5 of Schedule A

Specified persons or classes of persons means the Authorised Persons specified in Table 4 of Schedule A

Specified Water Industry Infrastructure means the water industry infrastructure specified in Table 2, Schedule A

