



Independent Pricing and Regulatory Tribunal

5-year review of Pitt Town Water Pty Ltd's network operator's licence (10_014)

**Prepared under the *Water Industry Competition
Act 2006***

Water — Report to the Minister
November 2016

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1 Summary

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

We recommend that the Minister varies PTWF's network operator's licence (licence number 10_014). These variations generally align PTWF's network operator's licence with our standard licence template to bring it in line with other network operator's licences. We also propose other changes to the licence to:

- ▼ update the licence structure
- ▼ update the licence language and terminology; and
- ▼ reflect PTWF's company name change to Pitt Town Water Pty Ltd (PTW) (noting the ACN remains the same).

PTWF is referred to as PTW herein.

2 Background

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 licence grant date.¹ The Minister granted PTW a network operator's licence on 11 November 2010. It was later varied, on 13 July 2012. We commenced our 5-year review of the licence on 11 November 2015.

This report outlines our recommendations to vary the existing licence conditions, the revocation of existing licence conditions and imposition of new licence conditions.² The report summarises our analysis, any issues identified through stakeholder consultation and our reasoning to vary the licence.

2.1 Scope of the review

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.

¹ WIC Act, section 85(2).

² WIC Act, section 85(3).

The 5-year licence review allows us to reconsider licence conditions in light of emerging risks to the scheme. We consider changing or adding new licence conditions where new risks are realised since a licence is granted or varied. Our 5-year review generally consists of applying the standard licence conditions where we are confident that there are no new or increased risks compared to the previous licence grant or variation date. The standard licence conditions are subject to change as a result of:

- ▼ outcomes of our assessments
- ▼ changes made by the Minister
- ▼ stakeholder submissions, and
- ▼ improvements to our compliance approach.

The standard licence conditions were developed and implemented after PTW's licence was issued. They form the basis for all new WIC Act licences, and licence variations. We consider that applying the standard licence conditions will:

- ▼ align the PTW licence with Flow Systems Pty Ltd's (Flow Systems) other licences³
- ▼ address any gaps in the licence
- ▼ 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 risk events that warrant varying PTW's licence further than applying the standard network operator's licence conditions. Therefore, our approach to the review was to apply the existing standard licence conditions to PTW's network operator's licence.

2.2 The WIC Act review and the new licensing regime

The *Water Industry Competition Amendment (Review) Act 2014* will result in significant changes to the WIC Act licensing framework and conditions of consent. The amended WIC Act includes provisions to transition schemes to the new framework where appropriate.

We recommend minimal changes to bring PTW's proposed licence in line with the standard licence conditions. We consider this is appropriate given the impending changes to the WIC Act and licensing regime.

³ PTW is a subsidiary of Flow Systems. Flow Systems' subsidiary companies currently hold eight network operator's licences granted under the WIC Act.

3 Network operator's licence review

This section outlines our analysis for PTW's 5-year network operator's licence review.⁴ 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 *Water Industry Competition (General) Regulation 2008* (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 submissions from PTW and the Metropolitan Water Directorate (MWD) within the Department of Primary Industries Water to inform our 5-year review. PTW confirmed that it had no comments regarding our proposed licence.⁶ MWD identified that they would not provide any comments on the proposed licence.⁷

4 Variations to licence conditions

The proposed licence aims to clarify the intent of licence conditions and improve efficient regulation by ensuring a consistent approach across network operator's licences.

The recommended licence, with the proposed changes highlighted is attached to this report (**Attachment A**). The rationale and outcomes of our review are detailed in the sections below.

Insurance

Insurance licence conditions are prescribed in schedule B, clauses B2 and B3 of the varied PTW network operator's licence.

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

⁴ Licence number 10_014.

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

⁶ Refer email from Laura Dixon on 1 January 2016 (D16/454).

⁷ Refer email from Rob O'Neill to Alison Kirk and Colette Grigg on 8 February 2016 (D16/30283).

We have changed the structure of licence conditions B2.1 and B3, and reworded B3 to bring PTW's proposed licence in line with the standard licence conditions and Flow Systems' other network operator's licences.

- ▼ We have added standard licence condition B3.2 to PTW's proposed licence. This condition allows us to monitor if the licensee has and will continue to have insurance as required under section 10(4)(c) of the WIC Act.
- ▼ We have reworded licence condition B3.3 to the standard licence condition wording to improve the clarity of the licence condition and improve consistency across Flow Systems' licences. PTW is currently required to submit a report when the 'type, level, or period' of insurance would/did change. We consider that the requirement for licensees to resubmit insurances when the insurance period changes (ie, insurances were renewed) is cumbersome for some licensees. Non-compliance with the condition does not pose a high risk to the licensee, consumer or Government. Therefore we amended the licence condition to include the requirement to report when the 'type, scope or limit' of insurances will/does change. We consider that this condition better captures any insurance changes that may increase the risk of PTW failing to maintain appropriate insurance for its scheme.
- ▼ We have added the standard licence notes to condition B3.4 to align PTW's proposed licence with our standard licence conditions. The note intends to remove ambiguity, to the licensee and IPART, around when we may request an Insurance Expert's report from the licensee.
- ▼ We have added standard licence condition B3.5 to PTW's proposed licence. This condition allows us to ensure the licensee has insurance appropriate for the activities for which it is licensed.

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

Compliance with audit guidelines

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

We have added licence condition B5 to bring PTW's proposed licence in line with our standard licence conditions and Flow Systems' other network operator's licences. PTW's current licence does not include a relevant requirement. We consider that the inclusion of this condition clarifies which auditing framework the licensee must comply with, to both the licensee and IPART.

Reporting of information in relation to the Register of Licences

Notification obligations in relation to the Register of Licences are prescribed in schedule B, clause B7 of the varied PTW network operator's licence.

We are required to maintain a register of licences in accordance with section 20 of the WIC Act and clause 18 of the WIC Regulation. The WIC Regulation outlines the details we are required to keep. PTW's current licence requires PTW to provide us with information, within 14 days, where there is a certain change which may affect the register of licences.

We have restructured, reworded and added to licence condition B7 to bring PTW's proposed licence in line with the standard licence conditions and Flow Systems' other network operator's licences. In particular, we have:

- ▼ reworded B7.1(a), (c) and (d), and
- ▼ added B7.1(b), (e)-(g), as per our standard licence conditions.

We consider that these changes clarify the intent of licence conditions related to the reporting requirements for IPART's register of licences. The amended licence conditions also provide the licensee with certainty regarding the changes they must notify us of, and the manner and form of their notification.

Monitoring

The Monitoring licence condition is prescribed in schedule B, clause B8 of the varied PTW network operator's licence.

PTW's current licence requires PTW to keep records of any samples taken for the purpose of its licence or associated plans. The licence also outlines requirements for the independent body that analyses any samples.

We have added a licence condition B8.2(d) as per our standard licence conditions. We consider that this licence condition provides the licensee with additional guidance on the record keeping requirements for water quality samples.

We have also reworded licence condition B8.3 to align it with the standard licence conditions and bring PTW's proposed licence in line with Flow Systems' other network operator's licences. We consider that the inclusion of this condition clarifies when the licensee is required to use an appropriately accredited laboratory.

Provision of a copy of Plan

The Provision of copy of Plan licence condition is prescribed in schedule B, clause B9 of the varied PTW network operator's licence.

PTW's licence currently requires PTW to provide a copy of its amended plans to IPART at the same time it provides a copy of the plans to an approved auditor, where the amendment is considered significant.

We have made minor wording changes to licence condition B9 to align PTW's proposed licence with our standard licence condition and Flow Systems' other network operator's licences. The change omits the reference to PTW's 'plans' and replaces this with references to 'a plan'. We consider that this licence condition continues to appropriately mitigate risks related to operation of the PTW scheme.

Delineating responsibilities – interconnections

Requirements of Codes of Conduct and delineation of responsibilities are prescribed in schedule B, clause B10 of the varied PTW network operator's licence.

PTW's current licence requires the licensee to establish a code of conduct between relevant network operators, retail suppliers and/or public water utilities.

We have updated licence condition B10 to bring PTW's proposed licence in line with the standard network operator's licence conditions. We consider that the standard licence condition clarifies the responsibilities of the licensee and any other connected entity. This minimises the chance of adverse impacts to PTW, other connected entities and consumers.

Notification of commercial operation

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

We have added the standard licence condition B13 to PTW's proposed licence. This condition requires PTW to notify IPART within 10 days of bringing any Specified Water Industry Infrastructure into commercial operation. PTW's current licence does not include a relevant requirement.

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

We consider that the inclusion of this licence condition reduces risks of adverse impacts to the licensee, customers and the Government. It also brings PTW's proposed licence in line with Flow Systems' other network operator's licences.

Consistent terminology, language and structure

Terminology, language and structure are updated throughout the licence.

We have amended the terminology, language and structure of PTW's licence to align it with the standard network operator's licence template. This also brings PTW's licence in line with Flow Systems' most recent network operator's licence, which was granted in May 2016.⁸ The changes are:

- ▼ Including a separate licence 'scope' at the front of the licence. This replaces clauses A1 and A2 of PTW's existing licence and is in line with our standard conditions.⁹
- ▼ An amendment to the licensed water industry infrastructure in tables 1.2 and 3.2, in the licence scope. This change brings PTW's proposed licence in line with the standard licence template and Flow Systems' other network operator's licences. Further, the change clarifies the scope of PTW's licence.¹⁰
- ▼ Updated the licensee's name from Pitt Town Water Factory Pty Ltd to Pitt Town Water Pty Ltd.¹¹
- ▼ Updated the entity name of an authorised person from Water Factory Company Pty Ltd to Flow Systems Pty Ltd.¹²
- ▼ Amended the licence structure to bring the numbering of license conditions in line with the standard licence template.
- ▼ Updated the interpretations and definitions sections at the end of Schedule A and Schedule B in the current licence. We have incorporated the interpretations and definitions in a section at the end of the licence, consistent with the standard licence template.
- ▼ Reviewed the terminology and language in the licence to bring it in line with the standard licence conditions.
- ▼ Fixed typographical errors (eg, capitalisation where it was not warranted).

5 Recommendations

We recommend that the Minister:

- 1 Varies the PTW network operator's licence (licence number 10_014) and conditions imposed on that licence as set out in the attached varied licence.

On making a decision whether or not to vary the licence, the Minister must provide us with a notice of the decision, including reasons for the decision.¹³ We

⁸ Flow Systems Operations (Box Hill North) network operator's licence (licence number 16_037).

⁹ We recently amended our standard network operator's licence template, following a recommendation from MWD for the Box Hill Pty Ltd network operator's licence (licence number 16_037).

¹⁰ We consider that these clarifications do not alter the scope of PTW's licence.

¹¹ The ACN remains the same as Pitt Town Water Factory Pty Ltd.

¹² The ACN remains the same as Water Factory Company Pty Ltd.

¹³ WIC Act, section 10(5).

will make the information in the notice available to the public on our website.
We will also notify the licensee of the amended licence.