



Independent Pricing and Regulatory Tribunal

Assessment of Flow Systems Pty Ltd's application to vary retail supplier's licence 13_001R

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

Report to the Minister
October 2014

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

Gary Drysdale (02) 9290 8477

Robert Aposhian (02) 9290 8406

Independent Pricing and Regulatory Tribunal of New South Wales

PO Box Q290, QVB Post Office NSW 1230

Level 8, 1 Market Street, Sydney NSW 2000

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

www.ipart.nsw.gov.au

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1 Summary

Flow Systems Pty Ltd (Flow Systems)¹ was granted a company-wide retail supplier's licence (Licence Number 13_001R) under the *Water Industry Competition Act 2006* (NSW) (the Act) on 17 April 2013. The licence authorises Flow Systems to provide retail services for drinking water, non-potable water, and sewerage services to its existing schemes.² The company-wide licence is linked to Flow Systems' relevant network operator's licences.³

On 28 May 2014, the Independent Pricing and Regulatory Tribunal of NSW (IPART) received an application from Flow Systems to vary its retail supplier's licence. The variation request sought approval to add retail activities for the Wyee development to the existing retail licence.

Flow Systems plans to provide residential and small commercial customers with drinking water, non-potable water and sewage treatment services at the Wyee development, which is located near Lake Macquarie, between Gosford and Newcastle on the NSW Central Coast.

The Minister may vary existing licence conditions at his/her own discretion or on the application of a licensee.⁴ When determining whether or not to grant a licence variation, the Minister must consider the licensing criteria set out in section 10(4)(a) to (e) of the Act, and have regard to the licensing principles set out in section 7(1) of the Act.

We have undertaken a detailed assessment of the variation request and, due to the nature of the variation, consulted with NSW Health and Hunter Water Corporation (Hunter Water), who raised no objections to the application.

Following our review, we are satisfied that Flow Systems has satisfactorily met the licensing criteria under section 10(4)(a) to (e) of the Act and the licensing principles under section 7(1) of the Act, having regard to the licence variation application and submissions made.

We recommend that the Minister varies Flow Systems' existing retail supplier's licence to include the Wyee development. We consider that the standard ministerially-imposed licence conditions should continue to apply. We have amended Schedule C of the licence to include the Wyee development (refer to Appendix A).

¹ Previously Water Factory Company Pty Ltd.

² Current schemes on the licence are Pitt Town, Central Park, and Discovery Point.

³ These network operator's licences are held by Flow Systems' subsidiaries. Licensees currently include Pitt Town Water for the Pitt Town development in the Hawkesbury Council region (10_014), Central Park Water for the Central Park development in Sydney (12_022), and Discovery Point Water for the Discovery Point development in Sydney (13_025).

⁴ *Water Industry Competition Act 2006*, Section 15, and *Water Industry Competition (General) Regulation 2008*, Clause 14.

We do not recommend that Flow Systems be subject to pricing regulation⁵ through a declaration of monopoly supply,⁶ at this time. We note that Flow Systems has indicated that it will peg its charges to those of Hunter Water for drinking water and sewerage services, and that it will provide recycled water at a price below the drinking water price.

We also consider that the appointment of a retailer of last resort by the Minister under section 54 of the Act should be deferred until proposed amendments to last resort provisions in the Act are finalised. Proposed changes in the *Water Industry Competition Amendment (Review) Bill 2014* (WIC Review Bill)⁷ will strengthen these arrangements.⁸ We propose deferring assessing the need for last resort arrangements until after the new bill is passed and as part of transitional arrangements in the lead up to commencement of the amended regulatory regime.⁹

2 Background

On 28 May 2014, we received a request from Flow Systems to vary its existing retail supplier's licence (13_001R) to include the provision of drinking water, non-potable water and sewerage services to the Wyee development. This report summarises our analysis, responses from two key stakeholders and our recommendation to grant Flow Systems a licence variation.

In accordance with the Act, IPART must consider the licence variation request and any stakeholder submissions, and provide a report on the application to the Minister. The Minister is required to determine the licence variation request by granting or refusing the application, and determining the conditions to which the licence (if granted) should be subject.¹⁰

2.1 Applicant history

The applicant, Flow Systems, is a privately owned company, primarily held by Brookfield Infrastructure Partners. Flow Systems currently owns several subsidiary corporations, through which it constructs, operates, and maintains water industry networks under existing network operator's licences granted under the Act. Through its subsidiaries, Flow Systems currently holds four

⁵ *Water Industry Competition Act 2006*, Section 52.

⁶ *Water Industry Competition Act 2006*, Section 51.

⁷ Currently being debated by Parliament.

⁸ For example, currently there are no operator of last resort provisions. These are needed to operate infrastructure following financial failure by a licensee.

⁹ As part of the transitional arrangements to the new licensing regime, IPART will examine which existing schemes should have a retailer or operator of last resort appointed.

¹⁰ *Water Industry Competition Act 2006*, section 15(b).

network operator’s licences, as outlined in Table 2.1. This includes a network operator’s licence for Wye Water, for the Wye residential development.

Table 2.1 Flow Systems’ licensed schemes, under its subsidiaries

Subsidiary	Scheme	Network operator’s licence	Licensed for
Pitt Town Water	Pitt Town development, Pitt Town	10_014	Non-potable water Sewage treatment
Central Park Water	Central Park development, Sydney	12_022	Drinking water Non-potable water Sewage treatment
Discovery Point Water	Discovery Point development, Wollie Creek	13_025	Drinking water Non-potable water Sewage treatment
Wye Water	Wye residential development, Wye, Lake Macquarie	14_026	Drinking water, Non-potable water, Sewage treatment

On 17 April 2013, the Minister granted Flow Systems a company-wide retail supplier’s licence for all of its schemes (13_001R).¹¹ The licence currently authorises Flow Systems to provide drinking water, non-potable water,¹² and sewerage services to its Central Park and Discovery Point schemes, and non-potable water and sewerage services to its Pitt Town scheme.

Through its existing schemes, Flow Systems currently has over 1,000 active customers at its Pitt Town and Central Park developments. Retail services at Discovery Point will commence operation shortly.

Flow Systems seeks to vary its existing retail supplier’s licence to include the Wye development.¹³ The licence variation proposes to include activities related to drinking water, non-potable water, and sewerage services. Flow Systems will service both residential and small commercial customers at the development. The scheme will supply drinking water, recycled water and sewerage services to a maximum of 1,000 new lots, staged over a number of years.

Although retail services are not expected to commence at the Wye development for some time, Flow Systems has emphasised the commercial imperative for assessing this licence variation request as soon as possible. We are advised that the scheme funding is predicated on a Federal Government grant to subsidise the cost of the water treatment plant. The scheme also requires the supply of drinking water from Hunter Water to Wye Water. The Federal Government

¹¹ Flow Systems’ company-wide retail supplier’s licence supersedes the Central Park Water and Pitt Town Water retail licences.

¹² Uses of non-potable water include replacing potable water for toilet flushing, clothes washing, irrigation, cooling tower make-up, and general wash-down of external surfaces.

¹³ The development area is specified in Wye Water’s network operator’s licence 14_026.

grant and the drinking water supply agreement with Hunter Water both require the granting of the network and retail operator licenses.

2.2 Legislative requirements for considering variations

Under the Act, the Minister may vary existing licence conditions at his/her motion or following an application by the licensee.¹⁴ Under the *Water Industry Competition (General) Regulation 2008* (the Regulation), an application to vary licence conditions must be in such form as the Minister may approve, accompanied by such fees as the Minister may determine,¹⁵ and be lodged at our office.¹⁶

Unlike with new licence applications, there are no explicit requirements under the Act or Regulation that require us to invite submissions from the public for a variation.¹⁷ We have considered the nature of the original licence granted and the scope and associated risks of the proposed variation to determine the level of stakeholder consultation required. Based on our assessment, we consulted NSW Health and Hunter Water. These submissions¹⁸ are outlined in sections 3.1.1 and 3.1.4 of this report.

The Regulation also outlines information required and matters to be considered when assessing a licence variation request. An application to vary a retail licence must address each of the matters referred to in section 10(4)(a)-(e) of the Act, to the extent they are relevant to the application.¹⁹ Further, the Minister may not grant a variation to the licence unless satisfied that the applicant meets the licensing criteria detailed in section 10(4)(a)-(e) of the Act.²⁰

In considering whether or not to vary the licence, and what conditions (if any) to impose, the Minister must also have regard to the licensing principles as set out in section 7(1) of the Act.²¹ These matters have been addressed in our assessment of Flow Systems' variation request and are provided in section 3.2 of this report.

3 Assessment of application for variation

This section of the report contains our assessment of Flow Systems' application for a variation to its retail supplier's licence and our recommendations. To assess the adequacy of applicant's capability as a retail supplier, we analysed the

¹⁴ *Water Industry Competition Act 2006*, section 15.

¹⁵ The Minister has not yet approved or determined a form or a fee for licence variations.

¹⁶ *Water Industry Competition (General) Regulation 2008*, clause 14.

¹⁷ *Water Industry Competition Act 2006*, section 9.

¹⁸ Hunter Water submission, 2 July 2014; NSW Health submission, 23 July 2014.

¹⁹ *Water Industry Competition (General) Regulation 2008*, clause 14(3).

²⁰ *Water Industry Competition Act 2006*, clause 10(4).

²¹ *Water Industry Competition (General) Regulation 2008*, clause 14(4).

information the applicant provided in its application, the two stakeholder submissions requested, and additional information submitted by the applicant in response to our subsequent requests.

3.1 Licensing criteria

The sections below outline our assessment of the application against the licensing criteria of the Act.

3.1.1 Technical capacity

We are satisfied that Flow Systems has adequate technical capacity to supply retail services associated with supplying water (drinking water and non-potable water) and sewerage services to its intended customers.

Our analysis included review of:

- ▼ Flow Systems' technical performance in preparing and implementing required systems and procedures at three previous schemes, Pitt Town, Central Park, and Discovery Point.²² The applicant proposes to use the same systems, procedures and resources to supply its intended customers at Wyee.
- ▼ Retail Supply Management Plans (RSMPs) developed for:
 - Central Park - which addresses the supply of drinking water, non-potable water supply and sewerage services
 - Pitt Town - which addresses the supply of non-potable water and sewerage services
 - Discovery Point - which addresses the supply of drinking water, non-potable water and sewerage services
 - Wyee - which addresses the supply of drinking water, non-potable water and sewerage services.
- ▼ Flow Systems' Code of Practice for Customer Complaints, which is consistent with the Australian Standards for complaints handling, AS ISO 10002-2006.²³
- ▼ Flow Systems' Code of Practice for Missed Payments and Debt Recovery.²⁴ This document outlines how Flow Systems will manage overdue or unpaid bills, and other potential disputes.
- ▼ Flow Systems' previous retail experience (in Australia) in the water industry and the specific personnel it has nominated for the project, as shown in the information provided to us in its application form.

²² This includes online customer billing systems showing billing charges and current and historical usage; and meter readings sent directly to Flow Systems' operating and billing system via telemetry systems.

²³ Relevant to all schemes licensed under Flow Systems' retail supplier's licence (13_001R).

²⁴ Relevant to all schemes licensed under Flow Systems' retail supplier's licence (13_001R).

We received one submission from Hunter Water²⁵ regarding Flow Systems' technical capacity, which noted that:

- ▼ Hunter Water is in the process of developing an agreement with Flow Systems to outline interconnection responsibilities related to drinking water supply.
- ▼ Flow Systems' contingency plan for dealing with wastewater overflows relied on a diversion to Hunter Water's sewer main. Hunter Water has no sewer main in the region.

In response, Flow Systems has amended its contingency plan to include wastewater storage and offsite disposal at a location to be agreed with Hunter Water.

We conclude that Flow Systems has the required technical capacity to be granted a variation to its retail supplier's licence for this scheme.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to technical requirements.

3.1.2 Financial capacity

We are satisfied that Flow Systems has adequate financial capacity to supply the proposed retail services.

Our financial assessment for Flow Systems' licence variation application considered the following matters:

- ▼ Activities associated with the variation present low financial risk in terms of cost, liability, and revenue.
- ▼ Flow Systems' existing retail supplier's licence requires the applicant to maintain financial capacity to carry out activities authorised in its licence.²⁶ Should Flow Systems cease to maintain adequate financial capacity to provide retail services, the applicant would be in breach of its licence.
- ▼ A full financial assessment of Flow Systems was conducted in September 2014. This assessment indicated that Flow Systems was able to demonstrate ongoing financial capacity to maintain its intended business operations.

Our recommendation to grant Flow Systems a licence variation should not be viewed as an endorsement of the future viability of the corporation. The initial assessment undertaken was based on a combination of information sources, none of which are individually determinative. The assessment was conducted for our own purpose and the Minister's purposes in assessing the application. The conclusion is not to be relied upon for any other purpose by any other person.

²⁵ Hunter Water submission, 2 July 2014.

²⁶ Retail supplier's licence 13_001R, clause B1.1.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to financial requirements.

3.1.3 Organisational capacity

We are satisfied that Flow Systems has adequate organisational capacity (current and ongoing) to supply services to its intended customers.

Our analysis showed that Flow Systems has:

- ▼ previous experience (in Australia) in the water industry and has specific personnel, with relevant experience, nominated to the project, as shown in the Curriculum Vitae of its key personnel provided to us in its application form
- ▼ an appropriate organisational structure to deliver the proposed work, based on its contractual arrangements and agreements
- ▼ appropriate risk management systems to address regulatory requirements.²⁷

Flow Systems currently undertakes similar retail services at its Pitt Town and Central Park schemes and will soon commence supply at Discovery Point. The proposed variation will allow the applicant to provide these retail services to the Wyee development.

We received no comment regarding Flow Systems' organisational capacity from NSW Health or Hunter Water. We consider that Flow Systems has demonstrated sufficient organisational capacity.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to organisational requirements.

3.1.4 Public health

We are satisfied that Flow Systems is capable of supplying retail services by means of water industry infrastructure, in a manner that protects public health.

Our analysis showed that Flow Systems has:

- ▼ Demonstrated technical capacity to analyse and manage hazards from source to end use through the preliminary risk assessment provided with the application, and detailed risk assessments provided for Pitt Town, Discovery Point and Central Park.
- ▼ Previously met NSW Health's requirements prior to commercial operation of each scheme.

²⁷ Flow Systems has a Compliance and Risk Management Framework, ongoing legal advice from Sparke Helmore, an asset management system, workplace health and safety tools, a customer relationship management (retail) platform, and quality assurance and environmental management policies aligned with ISO 9001.

We consulted with NSW Health²⁸ in reviewing this licence variation application. NSW Health supports Flow Systems' application to vary its existing retail supplier's licence to include the Wyee development area, provided a scheme specific Retail Supply Management Plan (RSMP)²⁹ is developed in consultation with NSW Health. A project specific RSMP has been provided. We will review whether NSW Health has been adequately consulted as part of Flow Systems' Retail Supplier Licence Plan Audit, before retail supply commences, and during future Operational Audits.

NSW Health also requested that it be consulted during the detailed risk assessment stage, and before commercial operation. We note that NSW Health will be invited to the detailed risk assessment and consulted as part of the network licence plan audit before commercial operation.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to public health. The licensee must comply with the requirements of NSW Health that we have agreed to, and that we have notified the licensee about, in writing.

3.1.5 Environment

We are satisfied that the proposed activities of Flow Systems as a retail supplier at the Wyee development will not present a significant risk of harm to the environment.

The environmental impacts at this proposed scheme are primarily associated with the construction and operation of the water industry infrastructure. We consider the environmental impacts from retail activities to be minimal. We note that environmental impacts of the associated network were reviewed when we assessed the relevant network operator's licence application.³⁰

We consider that Flow Systems has demonstrated sufficient capacity to not cause harm to the environment by undertaking the licensed activities.

We recommend that the common ministerially imposed licence conditions should be maintained in relation to the environment.

²⁸ NSW Health submission, 23 July 2014.

²⁹ Flow Systems has indicated that it will continue to develop the RSMP to become a single, all-inclusive document, covering all of its retail operations and sites. Each site, area of operations, and project-specific conditions will be added by way of an attached schedule, or similar method, to the main document.

³⁰ Wyee Water's network operator's licence 14_026.

3.1.6 Insurance

We are satisfied that Flow Systems has made, and will continue to maintain, appropriate insurance arrangements.

Our analysis showed that Flow Systems, as a retail supplier, has demonstrated sufficient insurance coverage in the areas of professional indemnity, public liability, workers' compensation and product liability. This is shown by the insurance certificates it provided as part of its licence variation application.

With respect to Flow Systems' Central Park scheme, a brokers report was provided which indicated sufficient insurances were in place that covered all of its affiliated companies (including Wye Water Pty Ltd), and that its insurance systems are adequate for the licensed activities.

Additionally, prior to receiving Ministerial approval to commence operation at Wye, the licensee will be required to provide a current insurance brokers report, indicating that adequate insurances are in place for the licensed activities, as part of its new infrastructure audit report.

We consider that Flow Systems has demonstrated sufficient insurance arrangements.

We recommend that the common ministerially imposed licence conditions should be maintained, which requires the licensee to obtain and maintain appropriate insurance, as determined by an independent insurance expert.

3.1.7 Sufficient quantities of water not from public water utility

We are satisfied that Flow Systems will obtain sufficient quantities of water from a source other than a public water utility.

We consider that by sourcing non-potable water from Wye Water, Flow Systems will obtain sufficient quantities of water from a source other than a public water utility. This will promote source substitution for drinking water and reduce reliance on reticulated water supplies that would otherwise have been obtained from a public water utility.

We recommend that the common ministerially imposed licence conditions should be maintained.

3.2 Licensing principles

We are satisfied that granting a variation to Flow Systems' retail supplier's licence is consistent with the licensing principles of the Act.³¹

We considered each of following licensing principles in making a recommendation as to whether or not the licence variation should be granted, and what licence conditions to impose.

- ▼ **Protection of public health, environment, public safety and consumers generally** – we consider that Flow Systems has the technical capacity and experience to undertake water and sewerage activities in a way that will manage health, environmental and general consumer risks. Flow Systems will only source and supply drinking water from Hunter Water's potable water network through infrastructure operated and maintained by Wyee Water. Further, should recycled water treatment fail, Flow Systems will divert drinking water into its recycled water networks for supply to its customers. Similarly, should sewerage treatment systems fail, Flow Systems will divert wastewater into storage for offsite disposal at a licensed sewage treatment plant.
- ▼ **Encouragement of competition** – historically, Hunter Water has provided monopoly supply of services in the Newcastle and Hunter regions. This project will enable a new entity to provide drinking water, sewerage services and non-potable water to a discrete development, thus encouraging competition in the provision of these services. The variation to Flow Systems' existing retail supplier's licence to include the Wyee development will encourage competition in the retailing of these services.
- ▼ **Ensuring sustainability of water resources** – under this licence, Flow Systems will provide non-potable water to its various developments from wastewater, which would have otherwise been treated and discharged into the environment. The recycled water replaces the use of drinking water at these developments for toilet flushing, cold water clothes washing, irrigation, car washing, and general wash-down water.
- ▼ **Promotion of production and use of recycled water** – under this licence, Flow Systems' supply of non-potable water promotes the use of recycled water as a substitute for drinking water for toilet flushing, irrigation, clothes washing (cold water only), car washing and general wash-down water.
- ▼ **Promotion of policies set out in any prescribed water policy document** – under this licence, Flow Systems' supply of non-potable water is consistent with objectives of the Lower Hunter Water Plan.

³¹ *Water Industry Competition Act 2006*, section 7(1).

- ▼ **Potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence** – in its application, Flow Systems has indicated that its drinking water and sewerage prices for this scheme will match those of Hunter Water. It has also indicated that its recycled water prices to its customers will be less than its drinking water prices.
- ▼ **Promotion of equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security** – not applicable. The State Government has not imposed such sharing requirements for water industry infrastructure within Hunter Water’s area of operations.

3.3 Additional matters considered

3.3.1 Disqualified corporation

Flow Systems is not a disqualified corporation. Its Director and CEO are not disqualified individuals.

In reaching this finding, we have considered the following information:

- ▼ Results of the ASIC³² and Dun & Bradstreet³³ reports that we have obtained on the status of the company and directors, confirming the company’s directors and credit risk rating.
- ▼ The statutory declaration made by the Director and Chief Operating Officer stating that neither Flow Systems nor any director or person concerned in the management of Flow Systems is or would be a disqualified corporation or disqualified individual within the meaning of the Act.
- ▼ Results of our search of the *Water Industry Competition Act 2006* (NSW) licence database,³⁴ confirming the above.

3.3.2 Monopoly supplier

We consider that Flow Systems should not be subject to pricing regulation through a declaration of monopoly supply, at this time.

Under section 51 of the Act, the Minister may declare a licensed retail supplier or licensed network operator to be a monopoly supplier in relation to a specified

³² ASIC report, accessed 4 June 2014.

³³ Dun & Bradstreet report, 4 June 2014.

³⁴ There are currently no disqualified corporations or individuals on the register pursuant to the *Water Industry Competition Act 2006*, section 16(e) and 16(f).

water supply or sewerage service, area and class of customers. Such a declaration may result in the licensee being subject to pricing regulation.³⁵

A declaration can only be made in relation to a service if the Minister is satisfied:

- ▼ that it is a service:
 - for which there are no other suppliers to provide competition in the part of the market concerned, and
 - for which there is no contestable market by potential suppliers in the short term in that part of the market, and
- ▼ in the case of a water supply service for recycled water, that connection of land to that service is required by or under some other Act.³⁶

Flow Systems has indicated that it will peg its prices to those of Hunter Water for drinking water and sewerage services, and will provide recycled water at a price below the drinking water price. Consequently, we see no need for Flow Systems to be subject to pricing regulation through a declaration of monopoly supply, at this time.³⁷

3.3.3 Retailer of last resort

We recommend that consideration of the appointment of a retailer of last resort should be deferred until after amendments to last resort provisions in the Act are finalised.

Significant changes are proposed to the last resort provisions within the Act. The proposed changes are included in the WIC Review Bill, which is currently being debated in Parliament. These proposed changes include creating new operator of last resort provisions (in addition to enhanced retailer of last resort provisions).³⁸

We recommend deferring any appointment of a retailer of last resort until after the new bill is considered by Parliament. If the new bill is passed, then we will assess and make recommendations on what last resort provisions should apply to this scheme, as part of transitional arrangements in the lead up to commencement of the amended regulatory regime.

3.3.4 Additional public interest considerations

We have not identified or received any comment in submissions from NSW Health and Hunter Water identifying any public interest concerns.

³⁵ *Water Industry Competition Act 2006*, section 52.

³⁶ *Water Industry Competition Act 2006*, section 51(2).

³⁷ Declarations by the Minister can be made at any time.

³⁸ *Water Industry Competition Amendment (Review) Bill 2014*, section 14(4)(f) and, sections 57A-57Q.

4 Recommendations

We are satisfied that Flow Systems has satisfactorily met the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7 of the Act.

We recommend that the Minister grants a variation to Flow Systems' existing retail supplier's licence, subject to the conditions as set out in amended licence number 13_001R.

We do not recommend that Flow Systems be subject to price regulation through a declaration of monopoly supply,³⁹ at this time.

We also recommend that consideration of the appointment of a retailer of last resort should be deferred until after amendments to the Act are finalised, and transitional arrangements for the amended regulatory regime are considered.

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.⁴⁰

The Minister is required to provide us with a notice of the decision, and of the reasons for the decision, on making a decision whether or not to grant the licence.⁴¹ We will then make the information in the notice available to the public on our website, in accordance with the requirements of the Act.⁴²

³⁹ *Water Industry Competition Act 2006*, section 51.

⁴⁰ *Water Industry Competition Act 2006*, section 10(2).

⁴¹ *Water Industry Competition Act 2006*, section 10(5).

⁴² *Water Industry Competition Act 2006*, section 10(6).

**A Amended Schedule C of retail supplier's licence
(13_001R)**