

# INSURANCE GUIDE FOR WICA LICENCE APPLICANTS AND LICENSEES

1/07/2020



## WHAT

This is a guide for *Water Industry Competition Act 2006* (WICA) licence applicants and licensees on how to make and maintain appropriate insurance arrangements.

The guide covers:

- ▼ How to use this guide
- ▼ Making appropriate insurance arrangements - including business description, risk assessment, types of insurance, limits of insurance and insurers
- ▼ Providing information or reports from insurance brokers or experts
- ▼ Maintaining appropriate insurance - including annual certification and periodic auditing.



## WHY

Under WICA, the Minister can only grant a licence to a licence applicant that has made, and will continue to maintain, appropriate arrangements with respect to insurance.

Once licensed, a licensee must maintain insurance that is appropriate for the size and nature of the activities authorised under its licence.

Appropriate insurance is important to protect the long term interests of WICA scheme customers, as it helps to safeguard a licensee's capacity to supply water or sewerage services. Industrial special risks, public and products liability, workers compensation and other insurance policies may enable licensees to recover from adverse events or meet any reasonable claims against them without compromising their business.



## WHO

This guide applies to WICA licence applicants and licensees.

It will also assist insurance brokers or experts providing advice to an applicant or licensee on its insurance arrangements.

## Guide to appropriate insurance arrangements

### How to use this guide

A licence applicant or licensee should refer to this Guide when making or maintaining appropriate insurance arrangements. Licence applicants and licensees should also provide this Guide to the insurance broker or expert who is assisting them to put appropriate insurance arrangements in place. Licence applicants and licensees must provide information or a report from an insurance expert to us to demonstrate that their insurance arrangements are appropriate.<sup>1</sup>

This Guide explains what we consider to be appropriate insurance arrangements. It also explains when and how to get information or a report from an insurance expert.

### Making appropriate insurance arrangements

We consider *appropriate insurance arrangements* to be arrangements that are *appropriate for the size and nature of the business activities being undertaken and the risks arising from those business activities*.

To make appropriate insurance arrangements, a licence applicant and licensee should:

- ▼ Clearly identify the business activities proposed to be or being undertaken
- ▼ Identify and analyse the key risks arising from the business activities
- ▼ Consider what types of insurance policies will cover the business activities and associated risks, and what activities or risks are uninsurable or will remain uninsured
- ▼ Consider what insurance limits and terms are appropriate for the size and nature of the business activities and associated risks, and
- ▼ Obtain insurance from an appropriate insurer that is appropriate for the size and nature of the business activities and associated risks.

---

<sup>1</sup> As required by our *WICA Licence Application Form*, available at <https://www.ipart.nsw.gov.au/Home/Industries/Water/Alternate-water-utilities-WICA/Forms-guidelines/WIC-Act-Licence-Application-Form-%E2%80%93-August-2019>.

This Guide discusses each of these aspects in further detail below.

## Business description

It is important to properly identify the business activities and ensure that the description of these activities accurately encapsulates the extent of the licence applicant's or licensee's business activities. This would assist to ensure licence applicants or licensees are provided with insurance policies that appropriately cover the activities being undertaking.

### Example

If the activities include the supply of potable and non-potable water services and the collection of different source water (such as stormwater and sewage) this should be clear in the business description of your insurance policies. For example, the business could be described as:

The design, construction, maintenance and operation of sewerage, drinking water, stormwater and recycled (non-potable) water infrastructure; the supply of water (potable and non-potable) services, sewage and stormwater collection services and sewerage services to residential, business and industrial customers and connections.

## Risk assessment

In order to properly identify and analyse the risks arising from the business activities, the licence applicant or licensee should:

- ▼ Utilise an approach consistent with the *AS/NZS ISO 31000-2018 (Risk Management – Guidelines)*, as published by the International Organisation for Standardization and as updated or amended from time to time
- ▼ Have regard to the preliminary risk assessment provided with the licence application or the final risk assessment (most up-to-date 'risk register') kept by the licensee to identify the key risks, and
- ▼ Consider all business risks, whether insurable or not.

The licence applicant or licensee should identify the key risks, the correlating types and levels of insurance required, and any uninsured or residual risks, and provide this information or report to us. The assistance of an insurance broker or expert may be needed to do so. See the section on 'Providing information or reports from insurance experts' for more details.

## Types of insurance

The licence applicant or licensee must have insurance to cover business activities and associated risks during two distinct phases – the design and construction phase and the operational phase.

As a guide, we look for the following types of insurance for the **design and construction** phase:

- ▼ Construction material damage – to cover losses to the construction site
- ▼ Public liability – to cover injury or loss to persons
- ▼ Professional indemnity – to cover planning or design activities and the provision of any other professional services or advice
- ▼ Contractor's pollution liability – to cover any pollution created from construction activities
- ▼ Worker's compensation – to cover any injury or loss to employees, as required by statute.

As a guide, we look for the following types of insurance for the **operational** phase:

- ▼ Property or Industrial special risks (ISR) – to cover material damage to the assets once operating (eg, storm damage to a plant)
- ▼ Public and products liability – to cover injury to persons, including from the product (eg, potable or non-potable water)
- ▼ Professional indemnity – to cover the provision of professional services or advice, if relevant
- ▼ Environmental impairment liability (EIL) – to cover clean-up costs and other liabilities arising from pollution
- ▼ Worker's compensation – to cover any injury or loss to employees, as required by statute.

However, it is the responsibility of the licence applicant or licensee to determine the types of insurance appropriate to cover its business activities and associated risks during these two phases. Other types of insurance may also be necessary.

## Levels of insurance

It is not possible to set generic levels of insurance, as the appropriate level will vary depending on the particular business activities being undertaken and the associated risks, the scale of those activities and whether the insurance is to cover related or parent company activities as well.

As a result, it is only possible to provide the following **general guidance** in this area:

- ▼ We consider limits of less than \$10million are not appropriate for **Professional indemnity** or **Public and products liability** insurance.
- ▼ The limit for **Construction material damage** insurance should be the value of the build plus any additional expenses including but not limited to demolition and architects.
- ▼ The limit for **Property / ISR** insurance should be the replacement cost to rebuild at today's dollar cost, plus any additional expenses including but not limited to demolition, architects and tankering or alternative arrangements needed to maintain services during the rebuild.
- ▼ The limit for **EIL** insurance should match the pollution potential identified in the risk assessment.

## Insurers

We require all insurers providing policies to licence applicants or licensees to have a recognised credit rating of A- or better.

## Providing information or reports from insurance experts

---

### When

At application stage

A licence applicant should provide with its application a letter or report from an insurance broker or expert to support its explanation on the appropriate level of insurance cover for the scheme. The letter or report should demonstrate why the type and level of insurance obtained or proposed to be obtained is appropriate for the size and nature of the proposed licensed activities. The explanation should show how the proposed insurance appropriately covers the risks identified in the applicant's preliminary risk assessment.

## When commencing commercial operation

A licensee is required to provide a report from an insurance broker or expert under a standard licence condition imposed on all WICA licences. Condition B2 requires this report to be provided prior to commencing commercial operation of the infrastructure. If a report (instead of a letter) was provided and accepted by us at the licence application stage, we may accept this report in satisfaction of this licence condition as long as the licensee can demonstrate that the same insurance is in place prior to commencing operation (this can be demonstrated by providing the current Certificates of Currency).

## From time to time

Under standard licence condition B2<sup>2</sup>, a licensee can also be required to provide an insurance expert's report to us from time to time, when requested in writing by IPART.

## How

### At application stage

Our *WICA Licence Application Form*<sup>3</sup> sets out the information a licence applicant must provide in relation to its proposed insurance arrangements. Licence applicants should provide a letter or report from an insurance broker or expert in support of their proposed arrangements.

If a report is to be provided, it should comply with our insurance expert's report template (see below).

### When commencing commercial operation

Once licensed, our *Network Operator's Reporting Manual* and *Retail Supplier's Reporting Manual* (Reporting Manuals) set out a prescribed form or template for the insurance expert's report to be provided by a licensee. In accordance with that template, the insurance expert must:

- ▼ Set out the type and level of insurance obtained by the licensee in relation to the licensed activities

---

<sup>2</sup> This may be condition B3 in older licences.

<sup>3</sup> Available at <https://www.ipart.nsw.gov.au/Home/Industries/Water/Alternate-water-utilities-WICA/Forms-guidelines/WIC-Act-Licence-Application-Form-%E2%80%93-August-2019>.

- ▼ Certify in their opinion that the type and level of insurance obtained by the licensee is appropriate for the size and nature of the licensed activities, and
- ▼ Set out the reasons as to why the licensee's insurance arrangements are appropriate.

Full details of the information to be provided in the report can be accessed from the template.<sup>4</sup>

## Maintaining appropriate insurance

---

### Annual certification

Once licensed, a licensee is required to file an annual compliance report with us. This is due no later than 1 September each year. As part of the annual compliance report, we now require each licensee to declare that it has maintained insurance that is appropriate for the size and nature of the activities authorised under its licence. The annual statement must be:

- ▼ Provided in the form prescribed in the Reporting Manuals<sup>5</sup>
- ▼ Signed on behalf of the licensee corporation
- ▼ Attach a copy of the current Certificates of Currency for all relevant insurance policies held, and
- ▼ Include a description of any relevant changes in insurance coverage and provide the reasons for the change, as set out in the Reporting Manuals.

### Periodic audits

We will periodically audit the licence conditions relating to maintaining appropriate insurance as part of our risk-based auditing program. We may require an insurance expert's report to be submitted and for copies of policy schedules and policy wording to be made available to us as part of the audit process (for example, if there is not a recent report to have regard to). We may audit this aspect of the licence with assistance from icare or another consultant.

---

<sup>4</sup> See Appendix H of the Reporting Manuals, available at <https://www.ipart.nsw.gov.au/Home/Industries/Water/Compliance/Policies-manuals-guidelines/Reporting-Manual-%E2%80%93-Network-Operators-under-the-WIC-Act-%E2%80%93-November-2019>

<sup>5</sup> See Appendix E of the Reporting Manuals, available at <https://www.ipart.nsw.gov.au/Home/Industries/Water/Compliance/Policies-manuals-guidelines/Reporting-Manual-%E2%80%93-Network-Operators-under-the-WIC-Act-%E2%80%93-November-2019>