



*Water Industry Competition Act 2006*

# Operational Approval Application Guide

May 2023

Water >>

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## Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

## Enquiries

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

Christine Allen (02) 9290 8412

Email: [wica@ipart.nsw.gov.au](mailto:wica@ipart.nsw.gov.au)

## The Independent Pricing and Regulatory Tribunal

IPART's independence is underpinned by an Act of Parliament. Further information on IPART can be obtained from [IPART's website](#).

## Version Control

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1	May 2023	Draft version released for stakeholder comment.

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# 1 Before you start

The *Water Industry Competition Act 2006* (WIC Act) enables private sector water utilities to apply for the following approvals to operate in NSW:

- **scheme approvals** – which authorise the construction of water industry infrastructure
- **operational approvals** – which authorise the operation of water industry infrastructure that has been constructed under a scheme approval.

Under the WIC Act, the Independent Pricing and Regulatory Tribunal of NSW (IPART) is responsible for receiving and assessing approval applications and approval variation applications, granting approvals, and administering and enforcing approvals.

This guidance document provides information to assist you to complete your operational approval application or operational approval variation application.

An operational approval application can be made by any person. An application to vary an operational approval can only be made by the original applicant for the approval or the registered operator of the scheme.

## 1.1 General instructions to applicants

### ⓘ Applicant's responsibilities

It is a criminal offence under section 73D of the WIC Act to provide false or misleading information or documents in an application.

The applicant must take all reasonable steps to ensure the information provided in the application form is complete, true, and correct.

The applicant (if a person), or an officer of the applicant corporation is required to make a declaration to this effect in the application form. Failure to disclose information, or any misrepresentation, may result in an approval not being granted or an approval later being revoked.

Substantial fines can apply for corporations and individuals providing false or misleading information to IPART or the Minister.

The questions asked in the **Operational Approval Application Form** allow us to evaluate the proposed scheme's capacity to be operated in compliance with the WIC Act and the *Water Industry Competition (General) Regulation 2022* (NSW) (WIC Reg).

Your responses should include all the necessary information to demonstrate that the infrastructure:

- has been substantially constructed as authorised by the relevant scheme approval
- is fit for purpose and capable of operating safely and reliably

- is capable of operating in a way that is consistent with the national safety guidelines and does not present a significant risk of harm to the environment, and there are adequate plans and systems in place to ensure this, and
- is capable of operating in compliance with the Act, regulations, plans and systems and conditions of the registered operator's licence.

For an **operational approval** to be granted, IPART must be satisfied of all the requirements set out in sections 7D(1) and 7D(2) of the WIC Act.

IPART must also have regard to the objects of section 2A and section 5A of the WIC Act when considering whether or not to grant an approval and what conditions are to be imposed on an approval.

For **section 2A**, these are:

1. to protect public health and safety and the environment in connection with the water industry, including in the longer term
2. to protect the interests of consumers, particularly small retail customers in the quality, reliability and price of water and sewerage services, including in the longer term
3. to facilitate the efficient, reliable and sustainable provision of water and sewerage services, having regard to financial, environmental and social considerations
4. to promote the sustainable use of resources in connection with the water industry
5. to facilitate competition in the water industry with a view to encouraging innovation and improved efficiency in the industry.

For **section 5A**, these are:

1. to promote the adoption of written policies concerning the use of water resources as prescribed by the regulations, if any<sup>a</sup>
2. to mitigate the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the approval or licence
3. to promote the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.

Where more extensive information is required in response to a question (e.g. audit reports), the application form requests you include the information as an attachment to the application. This ensures we have enough information to make an assessment in accordance with the relevant legislation.

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<sup>a</sup> Section 8 of the WIC Reg prescribes the following policies: [NSW Water Strategy](#), [Greater Sydney Water Strategy](#) and the [Lower Hunter Water Security Plan](#).

## Box 1 Structuring application responses

The applicant is responsible for providing correct information and satisfying IPART that the operation of the scheme will meet the legislative criteria. To assist with our assessment of your application we request you:

- label responses and attachments with the application question number being addressed in the document and/or the file name
- provide evidence and explain how this evidence supports your response
- for lengthy documents tell us where the document addresses a question. For example, use highlighting, and/or indicate the relevant sections or page numbers
- mark attachments that you wish to remain confidential as 'confidential' (discussed in **section 1.1.1** below).

**Do not provide information that is unnecessary to the application.**

**Failure to follow these guidelines may delay or lead to rejection of your application.**

### 1.1.1 How do we treat confidential information?

We use transparent and publicly available processes to consider applications and must invite submissions on applications, including from the public.<sup>b</sup> Unless they are confidential, we treat your application and attachments as public documents.

For Operational Approval variation applications, we will invite submissions from the registered operator, if the registered operator is not the applicant. We may also invite submissions from persons IPART considers appropriate.

Subject to our disclosure obligations (referred to below), we will treat confidential information provided for the purposes of your application as confidential. We may share that information with our consultants and other government departments but will do so on a confidential and 'need to know' basis.

You should let us know if you consider aspects of your application to be confidential so that we can discuss your confidentiality concerns with you. In general, we do not consider consultant reports and other technical information to be confidential.

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<sup>b</sup> Section 7A(1) of the WIC Act sets out who IPART must provide copies of your application to and invite submissions from.

In particular, you should provide separate confidential documents (i.e. documents in a separate computer file or files), which are clearly marked “confidential” in the filename, use a watermark (if possible), and clearly identify the confidential information that should not be publicly released.

If we agree with your confidentiality claims, we will publish only your public application responses on our website. However, we may give a copy of your confidential application responses to the Departments and Authorities responsible to the Ministers specified in the WIC Act or WIC Reg, on a confidential basis, if necessary to assess your application. We seek your consent to this in the ‘declaration and acknowledgement’ section of the **Scheme Approval Application Form (Question 11)**.

If we do not agree with all your confidentiality claims, we will explain where we disagree and ask you if you would prefer to either:

- withdraw your claim of confidentiality; or
- maintain your claim, which will mean that the information over which claim confidentiality does not form part of your application, so we will not take it into account.

Further, where we consider you have provided confidential information that may deny procedural fairness to other parties, we may invite you to withdraw your claim of confidentiality. If you do not, we may be unable to consider the information when determining your application.

## Disclosure obligations

Please note that third parties may apply under the *Government Information (Public Access) Act 2009 (NSW)* for access to applications, including applications that contain confidential information. If we receive such an application, we must decide on disclosure in accordance with that Act. That Act would require us to consult with you if we received such an application.

Where an application includes personal information, IPART will deal with that information in accordance with the information protection principles set out in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

### 1.1.2 Is there an application fee?

Application fees apply to applications for operational approvals or applications to vary an operational approval. **Table 1** details the application fees under the WIC Act.

Table 1 Application fees under the WIC Act

Type of application	Fee (\$)
Operational approval	2000
Variation of approval	2000

The operational approval application fee or variation application fee, as relevant, should be made payable to the Independent Pricing and Regulatory Tribunal of NSW or by electronic transfer to:

Westpac Banking Corporation

BSB: 032-001

Account No: 205717

Reference: WICA app

Provide a copy of the electronic transfer receipt with your application. You should contact us if you need to pay your application fee in other ways.

Note that once an application has been submitted, your application fee(s) will not be refunded if your application is refused or withdrawn.

### 1.1.3 How to submit the application?

To apply, you will need to submit the completed **Operational Approval Application Form** and attachments containing all relevant supporting documents. Please note that where there is more than one attachment in a question, they should be labelled as separate files, and combined into a single electronic folder/zip file.

When you have completed your application, you should submit via email (email to [wica@ipart.nsw.gov.au](mailto:wica@ipart.nsw.gov.au)) for applications below 10 MB. For larger applications, contact the applications team on (02) 9290 8412 or [wica@ipart.nsw.gov.au](mailto:wica@ipart.nsw.gov.au) so that secure file transfer arrangements can be made.<sup>c</sup>

#### Do you require further information?

If you have further questions about your application, you can contact our Water Regulation and Compliance team via:

- Email: [wica@ipart.nsw.gov.au](mailto:wica@ipart.nsw.gov.au), or
- Telephone: (02) 9290 8412
- We encourage you to discuss your operational approval application or variation application and obtain assistance from IPART's Water Regulation and Compliance team prior to submitting your application. Once we receive your application, we will assign you a contact officer, who will arrange your application and remain in contact with you throughout the application and assessment process.

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<sup>c</sup> We use a secure file transfer service (e.g. Sigbox) for larger files. Please note we do not accept USBs or other storage media for applications.



## 1.2 What happens once you have submitted your application form?

### 1.2.1 What will happen next?

#### What you can expect from us

When we receive your application, we will check that your **Operational Approval Application Form** is complete and that you have supplied all the necessary information and supporting documentation.

If your application is complete, we will seek submissions from the Departments and Authorities responsible to the Ministers specified in the WIC Act or WIC Reg.<sup>d</sup> We will also proceed to assess your application before making a decision to grant or refuse the approval.

We try to process applications quickly. Section 93B(2) of the WIC Act and Section 57(1)(b) of the WIC Reg require us to assess an operational approval application or variation application within 60 days from the lodgement date, excluding any period of time which stops the clock (as set out in **Box 2** below ). If possible, applications can be processed sooner depending on the complexity of the project, quality of the application and your responsiveness to requests for information.

#### What we expect from you

We expect a complete application that explains how the scheme meets the assessment criteria in the WIC Act and WIC Reg. All information and supporting documents must be submitted, including audit reports. These documents must be of a suitable standard.

If your application is incomplete, we will not process it. We may request additional information from you if your application is incomplete. This is likely to delay assessment of your application.

We may also request additional information in response to submissions made during our consultation or our detailed assessment of your application.

We may reject an application that does not comply with the requirements of the **Operational Approval Application Form** and this Guide.

You can withdraw your application at any stage during the assessment process.

#### Box 2 Stop the clock

Section 93B(2) of the WIC Act and section 57(1)(b) allows IPART 60 days to process an operational approval application or variation application. The following periods of time are excluded from the 60-day fixed period (i.e. stop the clock):

<sup>d</sup> See section 7A(1) of the WIC Act for details.

### Box 2 Stop the clock

- a public holiday
- the period declared by the Premier as the Christmas closedown period
- a period during which an applicant is asked by the Minister or IPART to provide further information or to take other action to enable the application to be determined and when the information is provided or the action is taken
- a period provided to the applicant or other persons to make submissions about the application to IPART
- a period during which an application audit is undertaken.

Source: Section 93B of the WIC Act; Section 57 of the WIC Reg.

## 1.2.2 What information is available to an applicant applying for an approval?

The WIC Act and WIC Reg place obligations on applicants. The WIC Act and Reg may also set out some standard approval conditions which will apply should an approval be granted.

We have prepared fact sheets and FAQs (see below) that explain the information that may be required for an operational approval application.

The granting of an operational approval only allows for an applicant to commercially operate new water and/or sewerage infrastructure as applied for in the scheme approval.

For further information, please refer to the following fact sheets or contact our Water Regulation and Compliance team as per the contact details in section 1.1.3 above.

You can find our fact sheets and FAQs on our website at [WICA Fact Sheets and FAQs](#).

## 1.3 Variations

Use **Operational Approval application form** if you are applying for a variation to an existing operational approval (a variation). You tell us if you are making a variation at **Question 6**.

An application for a variation to an approval can **only** be made by the original applicant for the approval or the registered operator of the scheme (see Section 7K(2) of the WIC Act).

You only need provide information to the extent that the existing operational approval is changed (see the example in **Box 3**).

### Box 3 Level of information required for variation application

**Example:** An applicant's scheme proceeds in stages. Stage 1 (of 3) has already received an operational approval and is operating. The applicant now wishes to proceed with stage 2 and is applying to vary its operational approval to also apply to stage 2. Stage 2 will relate to a bigger area, connecting a further 3,000 customers.

Question responses need only provide information that supports the approval of the additional stage.

In this example, if the details of already approved infrastructure and operations have not materially changed, there is no need to respond to these questions. The applicant can respond with "Unchanged since last application" in their answers.

In assessing the variation application, we will take into consideration the original operational approval application and the registered operator's compliance history.

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## 2 About the applicant and application

**Questions 1 to 6** tell us basic information about the applicant and the application.

### Question 1: Who are your contacts for this application?

**Question 1** tells us who the primary and secondary contacts are for the application. If we need to contact you about the application we will use the contact details in your response.

### Question 2: Who is applying for an operational approval or variation to an operational approval?

**Question 2** asks for identification details of the applicant. The applicant can be a person, a council or a corporation.

An application for a variation of an operational approval can **only** be made by the applicant for the approval or the registered operator of the scheme (Section 7K(2) of the WIC Act).

### Question 3: Is the applicant the registered operator of the scheme?

**Question 3** asks if the applicant is the registered operator for the scheme or has an agreement with the registered operator of the scheme. We use this information to determine if the applicant meets the criteria of section 7D(1)(f) of the Act, which states an operational approval must not be granted unless IPART is satisfied the applicant is the registered operator or has entered into an agreement with the registered operator for the operation of the infrastructure.

**registered operator**, means the holder of an operator licence who is registered as the registered operator for the water industry infrastructure.

If the applicant is not also the registered operator for the scheme infrastructure and has entered into an agreement with the registered operator, **Question 3** asks for a copy of the agreement.

Under section 7C(d)(ii) of the WIC Act, if an applicant is not the proposed registered operator, they must have entered into an agreement with the proposed registered operator for the operation of the scheme.

### Question 4: Is the applicant the proposed registered retailer or a council?

**Question 4** asks if the applicant:

- is a council
- holds a Retailer Licence, or

- has entered into an agreement with a public water utility or an appropriately authorised licensed retailer for the sale of the water or sewerage services provided by the infrastructure.

If the applicant has entered into an agreement with a public water utility or licensed retailer,

**Question 4** asks for a copy of the agreement.

We use this information to determine if the scheme meets the criteria of section 7D(1)(g).

Under section 7D(1)(g) of the WIC Act, an operational approval in relation to a regulated scheme can only be granted if the applicant:

- (i) holds a retailer licence or is a council, or
- (ii) has entered into an agreement with a public water utility or an appropriately authorised licensed retailer for the sale of the water or sewerage services provided by the infrastructure.

If an applicant is not the proposed registered operator, they must have entered into an agreement with the proposed registered operator for the operation of the scheme.

## Question 5: Do any of the following apply to the proposed retailer?

**Question 5** asks about the compliance history of the proposed registered retailer and any related corporations. We use this information to determine an application for scheme approval.



We understand that the applicant may not be the proposed retailer, and if so, you are providing this information to the best of your knowledge. In this situation we will seek to verify this information with the proposed retailer during our assessment.

Section 7D(2) of the WIC Act is set out as follows:

### Section 7D Grant of scheme approval

- (2) In determining an application for an operational approval, IPART must have regard to the following—
- (a) whether disciplinary action against the proposed registered retailer is pending or, as a result of disciplinary action against the proposed registered retailer, the proposed registered retailer is prohibited from being registered as the registered retailer under a further operational approval,
  - (b) whether, in the reasonable suspicion of IPART, a statutory default within the meaning of Division 6 has occurred within 2 years before the determination is made, and the proposed registered retailer, or a related corporation of the proposed registered retailer, is the alleged defaulter...

## Disciplinary action

Section 10(1) of the WIC Act provides that a statutory default occurs if:

- (a) a person contravenes a requirement of this Act to hold a licence or obtain an approval, or
- (b) a licensee contravenes this Act or the regulations, including a condition of a licence or approval, or
- (c) a licence is improperly obtained, or
- (d) an event occurs or circumstances come to light that mean the licensee would not be granted the licence if an application for the licence were now to be made.

Under section 10D(1) of the WIC Act, IPART may give written notice to the alleged defaulter specifying the default and requiring the alleged defaulter to show cause as to why disciplinary action should not be taken, if a statutory default has occurred.

Under section 10E(1) of the WIC Act, the Minister may give IPART a written notice requiring IPART to take disciplinary action, if IPART has not taken disciplinary action under section 10D, not including giving a written notice under section 10D(1).

For the purposes of section 7D(2)(a) of the WIC Act, disciplinary action is pending from the time when notice is given to the licensee requiring the licensee to show cause why disciplinary action should not be taken against them until a decision is made.<sup>e</sup>

## Question 6: What type of application is this?

**Question 6** asks what the application is for. An application can be made for either:

- a new operational approval, or
- a variation of an existing operational approval.

If you are applying for a variation to an existing operational approval, you only need to tell us about changes to the existing operational approval when answering a question. An application for a variation to an existing operational approval uses the **Operational Approval Application Form**.

Note that an application for a variation to an approval can **only** be made by the original applicant for the approval or the registered operator of the scheme (see Section 7K(2) of the WIC Act).

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<sup>e</sup> Section 7D(4) of the WIC Act.

## 3 About the scheme

### Question 7: What is the name of the scheme and scheme approval number?

**Question 7** asks for the name of the scheme and scheme approval number. This is to assist with identification and will be the scheme approval linked to the operational approval, if granted. The operational approval, if granted, must specify the scheme and scheme approval to which it applies (section 7F(2)(a)).

### Question 8: What industry infrastructure are you applying to operate?

**Question 8** asks what industry infrastructure are you applying to operate and what is the infrastructure's purpose? We use this information to meet the requirements of section 7F(2)(b) of the WIC Act.

This is particularly important if the infrastructure to which the application relates is not the entire scheme approval or a discrete stage of a scheme approval.

Examples of an infrastructure's purposes include: to pump out sewage, expand the reticulation system to service 400 more premises, temporary plant for 300 houses, permanent plant for 3,000 houses, sewage treatment and recycled water etc.

### Question 9: What stage/s does this application relate to?

**Question 9** asks if:

- the scheme is being constructed in stages, and
- if the scheme is being constructed in stages, which stage, or stages, the operational approval application relates to. Use the same:
  - description or naming convention of the stages used in the related Scheme Approval, and/or
  - refer to the relevant names, maps and diagrams, as those provided in the related Scheme Approval.

Describe the purpose of the stage or stages. For example, to pump out sewage, temp plant for 300 houses, permanent plant for 3,000 houses, sewage treatment and recycled water etc.

We use this information to meet the requirements of section 7F(2)(c). Section 7F(2)(c) of the WIC Act requires a scheme approval to, for a scheme that is to be constructed in stages, specify the stage or stages to which the operational approval applies.

We will specify the relevant stages in the operational approval.

## Question 10: Is the scheme or new infrastructure ready to commence operations?

**Question 10** asks if the scheme or new infrastructure is ready to commence operations. We use the response to this question to assess the scheme or infrastructure against the requirements of sections 7D(1)(a) to (d) of the WIC Act.

In responding to this question you should attach an application audit report or reports prepared by an independent auditor to provide evidence that the requirements in sections 7D(1)(a) to (d) have been met. The application audits undertaken in accordance with section 7E(2) of the WIC Act for an operational approval application are:

- **Pre-operational audit** (i.e. an audit of the adequacy of the water quality management system or sewage management system or plan, and the asset management system or plan)
- **New Infrastructure audit** (i.e. an audit of the infrastructure to assess whether it has been substantially constructed as authorised by the scheme approval and is capable of operating in compliance with the WIC Act, WIC Reg, its plans and systems and the conditions of the registered operator's licence).

### Minor variations

Some variations to an existing Operational Approval may not require application audits to be submitted. This can be because the variation being sought is so minor it does not require material changes to systems, plans or infrastructure. Examples of minor variations include a small extension of the area of operations or the addition of de-watering equipment.

You should contact our team if you believe your variation is in relation to a minor change that does not require application audits to demonstrate the requirements in sections 7D(1)(a) to (d) have been met. We can then confirm whether or not application audits are required to be submitted with your application. If audits are not required, you must still attach information that otherwise demonstrates that the scheme or new infrastructure is ready to commence operations and the requirements in sections 7D(1)(a) to (d) have been met.

### Selecting an auditor

We provide further guidance on Application audits and how to find an approved auditor in our [Audit Guidelines](#) on our website.

Your auditor may apply to us for approval, or you can find a pre-approved auditor from our [Audit Panel](#). If your auditor is applying for approval, they must apply before commencing audit activities.

Guidance on how to conduct audits is also contained in our [Audit Guidelines](#).

Sections 7D(1)(a) to (d) of the WIC Act state:

- (1) An operational approval must not be granted unless IPART is satisfied as to each of the following—



- (a) the infrastructure has been substantially constructed as authorised by a scheme approval for the infrastructure,
- (b) the infrastructure is fit for purpose and is capable of operating—
  - (i) safely and reliably, and
  - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
  - (iii) in a way that does not present a significant risk of harm to the environment,
- (c) there are adequate plans and systems in place to ensure the infrastructure continues to be fit for purpose and operated—
  - (i) safely and reliably, and
  - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
  - (iii) in a way that does not present a significant risk of harm to the environment,
- (d) the infrastructure is capable of operating in compliance with this Act and the regulations, the plans and systems referred to in paragraph (c) and the conditions of the registered operator's operator licence.

## Question 11: Declaration and Acknowledgement

**Question 11** asks for a completed Declaration and Acknowledgement for the application. This must be completed for the application to be accepted.