



**The NSW Water Industry Access Regime
Part 3 of the
*Water Industry Competition Act 2006***

**Application template for
binding non-coverage declaration**

Contents

A	Preamble	1
B	Complete applications and timing	2
C	Confidential information	3
D	Lodging applications	3
E	Application fee	4
1	Applicant details	1
2	Service for which binding non-coverage declaration is sought	2
3	Infrastructure intended to provide the service	5
4	Service to be provided by a water industry infrastructure not yet commissioned	8
5	Jurisdiction	9
6	Binding non-coverage declaration and the declaration criteria	10

A Preamble

This document sets out the information that should be included in an application to the Independent Pricing and Regulatory Tribunal of New South Wales (“IPART”) for binding non-coverage declaration of a water industry infrastructure service under Part 3 of the *Water Industry Competition Act 2006* (“Act”).

Binding non-coverage declaration is available to service providers under Part 3 Division 4 of the Act.

Section 31 provides that binding non-coverage declaration is only available in respect of infrastructure services to be provided by:

- proposed water industry infrastructure, being infrastructure (other than a minor extension to existing infrastructure) that is not currently constructed; or
- existing infrastructure that is not currently used; or
- existing infrastructure that is currently used otherwise than for the production, treatment, filtration, storage, conveyance or reticulation of water or sewage,

but does not apply to infrastructure services provided by existing water industry infrastructure. Section 34 provides that the Minister may only declare a service under this Division if any of the declaration criteria are not satisfied and the service is not the subject of a coverage declaration or an access undertaking.

The information requested in this document is essential for IPART to consider an application and to prepare a report in accordance with its obligations under the Act. By gathering this information at the time an application is made, IPART is looking to minimise the time taken to consider such applications. IPART may reconsider the information requested in this document within one year from the commencement of the Act.

Applicants should answer all relevant questions set out in this template and should also refer to:

- *The NSW Water Industry Access Regime: A Guide to declaration of infrastructure under the Water Industry Competition Act 2006* (2008) (“**Guide**”); and
- Application for Coverage Declaration

that are available for download from the IPART website.

Where an applicant does not have access to the exact information sought, they should provide a best estimate, or the best publicly available information, and indicate whether some other party is likely to have the information requested. Where applicants do not answer a question, they

should explain why the question is not relevant or why the answer has been omitted.

The numbered questions below are intended to provide applicants with an application template. In addition, a brief discussion is included in each section to help applicants focus their answers on the information IPART needs. As mentioned above, applicants should refer to the Guide for a more detailed explanation of IPART’s views of access issues and the coverage declaration criteria.

B Complete applications and timing

IPART will commence consideration of an application for binding non-coverage declaration once it receives a duly completed application. If an application has not been duly completed, IPART will notify the applicant. IPART strongly encourages applicants and their advisors to discuss their applications with IPART prior to lodgement.

A complete application should answer all the relevant questions set out in this document, including delineating the water industry infrastructure service for which binding non-coverage declaration is sought to apply and providing all relevant facts and supporting information.

When answering these questions, applicants should refer to evidence to support their arguments and cite the sources of this evidence. This includes any modelling or expert evidence that the applicant wishes to use.

IPART endeavours to provide a report on the application to the Minister within four months after the date of lodgement, as specified in section 33(4) of the Act. The Minister will use his or her best endeavours to make a decision on an application within six months after the date of lodgement, as specified in s33(3) of the Act.

The key milestones within this six month period are as follows:

	Pre-application discussions with IPART
Calendar day 0	Duly completed application lodged
Calendar day 3	<ul style="list-style-type: none"> • IPART furnishes the application to and invites submissions from: the Minister/s administering the Protection of the Environment Operations Act 1997, the Public Health Act 1991, the Water Industry Competition Act 2006 and the Water Management Act 2000 • Public notification of application: <ul style="list-style-type: none"> – IPART posts the application on its website; and – IPART places a public notice in the newspaper inviting submissions from the public.
Calendar day 30	Closing of submissions in response to Application
Calendar day 80	Draft report released and submissions invited on draft report
Calendar day 100	Closing of submissions in response to draft report
By Calendar day 120	Final report provided to the Minister

The above timetable is indicative only. Specific milestones may also be affected by public holidays and weekends.

The timeframe will not commence until a duly completed application is submitted. If an application is incomplete and significant information is omitted, IPART will notify the applicant and the applicant must resubmit the application with all deficiencies rectified.

C Confidential information

IPART uses open public processes to consider applications. IPART treats applications as public documents, unless confidentiality is agreed. It publishes applications on its website and provides them to interested parties.

Applicants wanting to submit confidential information should discuss the matter with IPART's Manager, Legal prior to making the application. Where IPART agrees to accept confidential material, applicants should provide separate copies of their application, one with the confidential information clearly marked and another for public release with the confidential information removed.

Each of these versions should be provided in electronic and hard copy form.

A request for access to confidential information will be determined in accordance with the *Freedom of Information Act 1989* and section 22A of the *Independent Pricing and Regulatory Tribunal Act 1992*.

D Lodging applications

Electronic copies of applications should be sent to by email to:

wica@ipart.nsw.gov.au

Hard copies should be sent by courier or delivered to:

Water Industry Competition Act
Access Division
Independent Pricing and Regulatory Tribunal
Level 8, 1 Market Street
Sydney NSW 2000

Hard copies may also be mailed to:

Water Industry Competition Act
Access Division
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

E Application fee

Each application must be accompanied by an application fee of \$2,500.

Application Template for Binding non-Coverage Declaration

1 Applicant details

Applications for binding non-coverage declaration for a water industry infrastructure service may only be made by or on behalf of, the service provider of that service.

The Act defines the service provider as the person who has control of the water industry infrastructure that provides the service, whether or not the person is a licensed network operator.

1.1 Who is the applicant?

Applicants should provide IPART with sufficient information to identify the company or individual making the application. Where the applicant is a subsidiary company, details of the parent company should be included.

1.2 Who is the applicant's representative?

Applicants should provide IPART with the name of the person who is its authorised representative in relation to the application. IPART will direct its communications and requests for information to this person.

1.3 Contact details

Contact details should include relevant email addresses and a physical address for the delivery of documents, including the notification of any decision of the designated Minister or IPART related to the application or the resulting report. Applicants should also provide a telephone number, email address and postal address for the representative nominated under question 1.2.

2 Service for which binding non-coverage declaration is sought

The Act provides that a binding non-coverage declaration may be sought for infrastructure services to be provided by:

- “(a) proposed water industry infrastructure, being infrastructure (other than a minor extension to existing infrastructure) that is not currently constructed, or*
- (b) existing infrastructure that is not currently used, or*
- (c) existing infrastructure that is currently used otherwise than for the production, treatment, filtration, storage, conveyance or reticulation of water or sewage,*

but does not apply to infrastructure services provided by existing water industry infrastructure.”

Accurately defining the water industry infrastructure service for which binding non-coverage declaration is sought is essential to a binding non-coverage declaration application.

An application for binding non-coverage declaration can only be made of water industry infrastructure located in the area of operations of the Sydney Water Corporation and Hunter Water Corporation. However, this may be extended in the future.

The Act defines “infrastructure service” as:

“the storage, conveyance or reticulation of water or sewage by means of water industry infrastructure, and includes the provision of connections between any such infrastructure and the infrastructure of the person for whom water or sewage is stored, conveyed or reticulated, but:

- (a) does not include the storage of water behind a dam wall, and*
- (b) does not include:*
 - (i) the filtering, treating or processing of water or sewage, or*
 - (ii) the use of a production process, or*
 - (iii) the use of intellectual property, or*
 - (iv) the supply of goods (including the supply of water or sewage),*

except to the extent to which it is a subsidiary but inseparable aspect of the storage, conveyance or reticulation of water or sewage.”

The meaning of infrastructure service is discussed in more detail in the Guide.

If more than one proposed service has been identified, applicants should describe how these services are related and provide facts and evidence on the consequences of not obtaining binding non-coverage declaration to all of the services. For example, if one of the proposed services is not declared, does the applicant still require binding non-coverage declaration of the remaining services?

2.1 Describe the service

Binding non-coverage declaration under Part 3 of the Act applies to a proposed service provided by means of water industry infrastructure rather than the infrastructure itself.

Applicants should specify the service they wish to have declared in terms of what would be bought and sold, or for which there is a potential transaction.

Applicants should ensure they have identified all of the services that would need to be declared for access to enhance competition in other markets.

Some examples of definition of a service are found in Box 1 below:

Box 1 - examples of definition of a service

Sewage services:

Example 1: A service for the transportation of sewage provided by means of the North Head Reticulation Network, from a customer's boundary trap to points of interconnection.

Example 2: A service for the connection of new sewers to the North Head Reticulation Network at points of interconnection.

Water services:

Example 3: A service for the transportation of potable water by way of trunk main from Hoxton Park to Camden South

2.2 How will the service relate to water industry infrastructure?

2.3 What are the reasons for seeking binding non-coverage declaration of the service?

2.4 What would be the consequences for the applicant and any other interested parties if binding non-coverage declaration were not obtained?

- 2.5 If the applicant is seeking binding non-coverage declaration of multiple services, describe how these services interrelate.**
- 2.6 What are the consequences of not obtaining binding non-coverage declaration of each of the services?**

3 Infrastructure intended to provide the service

Applicants should clearly identify the water industry infrastructure that it intends to use to provide the service.

The Act separates water industry infrastructure into two categories:

- “1) *water infrastructure*, which means any infrastructure that is, or is to be, used for the production, treatment, filtration, storage, conveyance or reticulation of water, but does not include:
- (a) *any pipe, fitting or apparatus that is situated downstream of a customer’s connection point to a water main, or*
 - (b) *any pipe, fitting or apparatus that is situated upstream of a customer’s connection point to a stormwater drain;*
- 2) *sewerage infrastructure*, which means any infrastructure that is, or is to be, used for the treatment, storage, conveyance or reticulation of sewage, including any outfall pipe or other work that stores or conveys water leaving the infrastructure, but does not include any pipe, fitting or apparatus that is situated upstream of a customer’s connection point to a sewer main.”

3.1 Service not provided by existing water industry infrastructure

As noted above, the Act provides that binding non-coverage declaration may be sought in relation to infrastructure services to be provided by:

- “(a) *proposed water industry infrastructure, being infrastructure (other than a minor extension to existing infrastructure) that is not currently constructed, or*
- (b) *existing infrastructure that is not currently used, or*
- (c) *existing infrastructure that is currently used otherwise than for the production, treatment, filtration, storage, conveyance or reticulation of water or sewage,*

but does not apply to infrastructure services provided by existing water industry infrastructure.”

The applicant must identify which of the above categories the infrastructure falls into and provide the information requested below in relation to each applicable category.

3.2 Proposed infrastructure (a)

The applicant must provide a description of the infrastructure that (other than a minor extension to existing infrastructure) is not currently constructed and all available information that will allow IPART to understand the structure, nature and extent of the proposed infrastructure and the timetable for its construction.

3.3 Unused infrastructure (b)

The applicant must describe the unused infrastructure. The applicant must explain why the infrastructure is not currently used and what modifications may need to be made before the infrastructure is capable of providing the service. To assist IPART's understanding, applicants should also provide information as to the use to which the infrastructure was previously put (if any) and when the infrastructure ceased to be used, and why. Applicants should also address when the infrastructure is expected to commence operation and the nature of those intended operations.

3.4 Infrastructure otherwise used (c)

The applicant must describe the existing infrastructure and demonstrate that it is currently not used for the production, treatment, filtration, storage, conveyance or reticulation of water or sewage. The applicant should describe the infrastructure's current and proposed future use.

3.5 Location of the infrastructure

An application for binding non-coverage declaration can only be made for infrastructure that is or will be located in the area of operations of the Sydney Water Corporation and Hunter Water Corporation. However, this may be extended in the future.

Include a map and/or diagram that shows the location of the infrastructure, the points at which it connects with other relevant pieces of infrastructure, the location of any similar infrastructure or proposed infrastructure in the same region or that supply the same markets, and the location of relevant population centres or major users.

3.6 What is the minimum bundle of assets that must be declared to provide the service?

3.7 Why do all of these assets form the minimum bundle necessary to provide the service?

3.8 How would the infrastructure be used to provide the service?

- 3.9 How will using the infrastructure to provide the service affect the provision of other services?**
- 3.10 Is any owner or operator of the infrastructure vertically integrated or associated with other entities operating in other parts of the distribution chain? If so, describe the nature of the relationship between operator/owner and entity.**

4 Service to be provided by a water industry infrastructure not yet commissioned

Applications may not be made after the relevant water industry infrastructure has been commissioned.

The applicant must advise whether the water industry infrastructure by which the service is to be provided has or has not been commissioned.

5 Jurisdiction

Some types of water or sewage services are explicitly excluded from binding non coverage declaration under Part 3 of the Act. Where there is potential debate about whether the service falls under an exclusion, applicants should provide evidence on why they think the service is within the scope of Part 3 of the Act.

5.1 Will the service include storage of water behind a dam wall?

5.2 Will the service include:

- the filtering, treating or processing of water or sewage;
- the supply of goods (including the supply of water or sewage);
- the use of intellectual property; or
- the use of a production process?

5.3 If you answered yes to 5.2 is this activity a subsidiary but inseparable aspect of the storage, conveyance or reticulation of water or sewage?

If the proposed service potentially covers activities that fall within the exclusions, applicants should provide evidence on why that activity is a subsidiary but inseparable aspect of the service. In long water transportation networks, for example, additional water treatment may be required along the length of the network to ensure that any water extracted meet Health Guidelines.

6 Binding non-coverage declaration and the declaration criteria

Section 34 provides that:

- “(1) The Minister must determine a binding non-coverage application:*
- (a) if satisfied:*
 - (i) that any of the declaration criteria are not met in relation to the service to which the application relates, and*
 - (ii) that the service is not the subject of a coverage declaration or an access undertaking,*
- by making a binding non-coverage declaration in relation to the service, or if not so satisfied, by refusing to make such a declaration.”*

The declaration criteria are set out in section 23 as follows:

- “(a) that the infrastructure is of State significance, having regard to its nature and extent and its importance to the State economy,*
- (b) that it would not be economically feasible to duplicate the infrastructure,*
- (c) that access (or an increase in access) to the service by third parties is necessary to promote a material increase in competition in an upstream or downstream market,*
- (d) that the safe use of the infrastructure by access seekers can be ensured at an economically feasible cost and, if there is a safety requirement, that appropriate regulatory arrangements exist,*
- (e) that access (or an increase in access) to the service would not be contrary to the public interest.”*

6.1 Identify which of the coverage declaration criteria do not apply

The applicant must identify which of the coverage declaration criteria it considers do not apply to the infrastructure service.

6.2 Explain why each of the coverage declaration criteria identified at 6.1 does not apply

The applicant should address the questions asked and information sought in the Application Template for Coverage Declaration to demonstrate why each of the coverage declaration criteria identified at 6.1 do not apply.

The applicant should address each criterion identified at 6.1 separately.

The applicant should also refer to the Guide.

6.3 Is the service subject to coverage declaration or an access undertaking?

6.4 Why is binding non coverage declaration sought?

6.5 What would be the consequences for the applicant if binding non coverage declaration were denied?

6.6 Identify and provide contact details for parties likely to be interested in the application

The applicant should provide the name and address of other parties who may wish to comment on the revocation application, including:

- others who may intend to seek access;
- owners or operators of similar facilities in Australia;
- relevant industry bodies or associations;
- Australian, State or Territory government departments or agencies;
- other suppliers, or potential suppliers, in the markets in which it is claimed that competition would not be promoted; and
- significant customers in upstream or downstream markets.