



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

**Application template for
revocation of coverage declaration**

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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 revocation of coverage declaration of a water industry infrastructure service under Part 3 of the *Water Industry Competition Act 2006* (“Act”).

Service providers may seek revocation of a coverage declaration under Part 3 Division 3 of the Act. The Minister may revoke coverage declaration where any of the declaration criteria are not met.

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 this document within one year from the commencement of the Act.

Applications may only be made by a service provider. 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 revocation of 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 currently subject to coverage declaration 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.

Applications should be submitted to IPART electronically and in hard copy. Applications can be submitted by electronic email to IPART on the following electronic email address: wica@ipart.nsw.gov.au. IPART endeavours to provide a report on the application to the Minister within four months after the date of lodgement, as specified in section 29(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 s30(4) 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 <i>Protection of the Environment Operations Act 1997</i>, the <i>Public Health Act 1991</i>, the <i>Water Industry Competition Act 2006</i> and the <i>Water Management Act 2000</i>. • IPART must provide a copy of the revocation application to the access seeker • 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 the application
Calendar day 80	Draft report released and submissions invited on the draft report
Calendar day 100	Closing of submissions in response to the draft report
By Calendar day 120	Final report provided to the Minister
By Calendar day 180	The Minister makes a decision on the application

The above timetable is indicative only. Specific milestones may be also 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 Revocation of Coverage Declaration

1 Applicant details

1.1 Who can apply?

Applications for revocation of a coverage declaration of 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.

1.2 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.

1.3 Who is the applicant's representative?

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

1.4 Contact details

Contact details should include relevant email addresses and a physical address for the delivery of documents, including for 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 1.3.

2 Coverage declaration application and decision

The applicant should provide detailed information and supporting documentation, in respect of the coverage declaration application.

2.1 Who was the coverage declaration applicant?

Applicants should provide IPART with sufficient information to identify the company or individual who made the coverage declaration application.

2.2 Contact details for the coverage declaration applicant

Contact details should include relevant email addresses and a physical address for the delivery of documents, including for notification of any decision of the designated Minister or IPART related to the application or the resulting report.

2.3 Coverage declaration date

Applicants should provide the date of the coverage declaration.

2.4 Coverage declaration term

Applicants should provide the term of the coverage declaration.

2.5 Infrastructure service subject to coverage declaration

Applicants must identify the declared water industry infrastructure service for which revocation is sought.

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 an application is successful, revocation will only affect the declared service that is the subject of the application, not all declared services of the infrastructure generally.

If more than one declared service has been identified, applicants should describe how these services are related and provide facts and evidence on the consequences of not obtaining revocation for all of the services. For example, if one of the declared services does not have its declared status revoked, does the applicant still seek revocation of the remaining services?

2.6 Identify the infrastructure used to provide the service

Applicants should clearly identify the water industry infrastructure that provides 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 Access agreements and determinations

3.1 Describe the details of access agreement inquires and access agreements entered into following coverage declaration

The applicant should set out the details of access negotiations and agreements that followed coverage declaration, including:

- identifying all parties with whom the applicant has an access agreement;
- identifying all parties who have inquired about an access agreement;
- a timeline of access negotiations with each access seeker/inquiry;
- the terms of access set out in each access agreement; and
- any other details that may assist IPART's consideration of this application.

3.2 Describe the details of access determinations following coverage declaration

The applicant should set out details of any access determination(s) arbitrated under the Act, including:

- identifying all parties with whom the applicant has granted access subject to an access determination;
- identifying all parties who have inquired about an access determination;
- a timeline of the arbitration;
- the terms of access set out in the access determination(s); and
- any other details that may assist IPART's consideration of this application.

3.3 What will happen to parties currently accessing the infrastructure if revocation is granted?

The applicant should set out how the applicant intends to operate the infrastructure if revocation is granted. In particular, will persons currently granted access continue to be granted access? Does the applicant intend to grant access to persons in the future if revocation is granted? On what terms would access be given if revocation were to be granted?

4 Revocation of coverage declaration

Section 30(1) provides that:

“(1) The Minister must determine a revocation application:

- (a) if satisfied that any of the declaration criteria are not met in relation to the service to which the application relates, by revoking the coverage declaration for the service, or*
- (b) 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.”*

4.1 Identify which of the coverage declaration criteria no longer apply

The applicant must identify which of the coverage declaration criteria it considers no longer apply to the infrastructure service.

4.2 Explain why each of the coverage declaration criteria identified at 4.1 no longer applies

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 4.1 no longer applies.

The applicant should address each criterion identified at 4.1 separately.

The applicant should also refer to the Guide.

4.3 Why is revocation sought?

4.4 What would be the consequences for the applicant if revocation were denied?

4.5 If the applicant is seeking revocation relating to multiple declared services, describe how these services interrelate

4.6 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 currently or intend to make use of the declared service;
- 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 no longer be promoted; and
- significant customers in upstream or downstream markets.