

WICA ACCESS FACT SHEET NO 1

Water Industry Competition Act 2006 The access regime – an overview

August 2008

The NSW Government has introduced a range of reforms to encourage private sector participation in the supply of water and provision of sewerage services in NSW. The reforms are designed to promote competition, investment and innovation in water industry infrastructure, while safeguarding public health, the environment and consumers.

The reforms have been implemented by the *Water Industry Competition Act 2006* (NSW) (**WICA**). Among other things, the WICA establishes:

- ▼ an access regime to permit private sector access to certain water infrastructure services and sewerage infrastructure services, allowing competition in the supply of water services and provision of sewerage services;
- ▼ a licensing scheme to regulate the involvement of the private sector in the supply of these services; and
- ▼ a dispute resolution process to resolve disputes arising under the access regime and other disputes arising in connection with sewer mining.

This Information sheet provides an overview of the access regime. More information about the access regime and aspects of the WICA reforms can be found in the following Information sheets:

- ▼ WICA Access Fact Sheet No 2: The access regime – coverage, revocation and binding non coverage declarations and access undertakings
- ▼ WICA Access Fact Sheet No 3: Dispute resolution.

The access regime

The access regime makes it possible for private sector access seekers to access certain water infrastructure services and sewerage infrastructure services (services) and so compete with the service providers who control those services.

An infrastructure service is the storage, conveyance or reticulation of water or sewage by means of water infrastructure or sewerage infrastructure (see further the full definition of “infrastructure service” in the Dictionary in the WICA).

Water infrastructure is any infrastructure that is, or is to be, used for the production, treatment, filtration, storage, conveyance or reticulation of water (but does not include any pipe, fitting or apparatus that is situated downstream of a customer’s connection point to a water main, or upstream of a customer’s connection point to a stormwater drain).

Sewerage infrastructure is 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).

What infrastructure is covered by the access regime?

The access regime covers water infrastructure and sewerage infrastructure situated in, on or over land referred to in Schedule 1 of the WICA (Scheduled areas). At the moment, the Scheduled areas are the area of operations of the Sydney Water Corporation (as referred to in *Sydney Water Act 1994* (NSW) s 10) and the Hunter Water Corporation (as referred to in *Hunter Water Act 1991* (NSW) s 16).

The Minister can add more scheduled areas or include more land in the existing scheduled areas.

What services are covered by the regime?

For a service within a Scheduled area to be covered by the regime, it must be the subject of:

- ▼ a coverage declaration; or
- ▼ an access undertaking.

Infrastructure that is the subject of a binding non-coverage declaration is exempt from the regime.

Coverage declarations

A coverage declaration is a ruling made by the Minister that a particular service is covered by the access regime. This means that the private sector may negotiate access to that service and compete with the service provider who controls the service.

Information about the process of making applications for coverage declarations and the obligations of service providers once a declaration has been made can be found in WICA Access Fact Sheet No 2.

Access undertakings

An access undertaking is a document given by a service provider and approved by IPART setting out the service provider's arrangements for providing access to one or more of their services. If the undertaking is approved by IPART, it will govern the basis on which the service provider will give access to access seekers.

An access undertaking may be approved over a service that is the subject of a coverage declaration, in which case the coverage declaration will have no effect over that service.

Information about the process of approving access undertakings and the obligations of service providers once an undertaking has been approved can be found in WICA Access Fact Sheet No 2.

Binding non-coverage declarations

Some infrastructure may be made the subject of a binding non-coverage declaration, which means that it cannot be made the subject of a coverage declaration for a period of up to ten years.

The Minister may revoke a binding non-coverage declaration at the request of the service provider for the service to which the declaration relates, or if the application for the declaration contained false or misleading information or failed to contain information that it was required to contain.

Access register

IPART is responsible for keeping an access register containing information about the access regime, including:

- ▼ the infrastructure services that are the subject of coverage declarations;
- ▼ the infrastructure services that are the subject of access undertakings; and
- ▼ the infrastructure services that are the subject of binding non-coverage declarations.

The register can be inspected on IPART's website or at IPART's office during normal office hours. Copies of the register are also available, at cost, from IPART's office during normal office hours.

Applying for access – negotiation and the negotiation protocols

An access seeker who is seeking access to an infrastructure service covered by a coverage declaration or access undertaking must apply to the service provider for an access agreement.

The application must be made in the prescribed form and include details about the access sought and why it is sought, as well as a range of other information. A copy of the coverage declaration template is available on IPART's website.

Negotiation protocols have been prepared to assist access seekers and service providers with the application process. A copy of the negotiation protocols is available on IPART's website. The protocols take the form of minimum requirements that access seekers and service providers must comply with, as well as additional requirements that will apply to them. The parties may agree to not follow IPART's negotiation protocol (other than the protocols set out in Schedule 1 of the negotiation protocols). If they choose to do this, they must notify IPART.

The negotiation protocols cover such matters as obtaining information from service providers, requesting access, the service provider's assessment of the request, negotiating the access agreement (including the holding of meetings and sharing of information), disputes about access and the referral of disputes to IPART. The protocols require each party to negotiate in good faith and require the service provider to use all reasonable endeavours to accommodate the access seeker's requirements.

If either party later applies to IPART to have an access dispute arbitrated, IPART will first consider whether that party has complied with the protocols and attempted to resolve the dispute by negotiating in good faith. See further WICA Access Fact Sheet No 3.

Arbitration of access disputes

If an access seeker and a service provider are unable to agree on the terms on which access is to be provided, either party may refer the matter to IPART for arbitration. The arbitration process is explained in WICA Access Fact Sheet No 3.

Important

This Information sheet is intended to provide an overview of the reforms introduced by the *Water Industry Competition Act 2006* (NSW) (**WICA**). It is not intended to be a detailed or definitive guide to the operation of the WICA. If your rights or interests are affected by the WICA you should refer to that legislation and to the other regulatory materials referred to in this Information sheet, and if appropriate seek legal or other professional advice.