



public interest
ADVOCACY CENTRE LTD

**Licence to bill: Submission to IPART Review of
the Operating Licence for Sydney Water
Corporation**

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1. The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the (then) NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Industry and Investment NSW for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

2. Energy + Water Consumers' Advocacy Program

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the Program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the Program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW (CPSA);
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Institute of Sustainable Futures (ISF), University of Technology (UTS);
- Western Sydney Community Forum (WSCF); and
- National Seniors.

3. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to participate in the *Review of the Operating Licence for Sydney Water Corporation*. Recognising the operating licence as a key element in the regulatory framework governing the relationship between Sydney Water and its customers, it is imperative that the new licence and customer contract provide adequate protection for customers and consumers. To assist in realising this outcome, PIAC offers the following comments about the review process, the proposed licence form, retail supply management and the customer contract. PIAC discloses that it is a member of the Sydney Water Corporate Customer Council.

4. Review process

The *Review of the Operating Licence for Sydney Water Corporation Issues Paper* includes a timetable that documents how stakeholders may participate in the review process.¹ Whilst, as indicated, PIAC appreciates the opportunity to prepare a submission to the *Issues Paper*, it is concerned that there is no scope for stakeholders other than Sydney Water to comment on the draft operating licence. Given, as IPART notes, Sydney Water can have profound and far-reaching impacts on its customers, public health and the environment,² PIAC submits that consumer, environmental and other stakeholders must have the opportunity to comment on the draft regulatory framework. As is the case for IPART administered price determinations, PIAC requests that the review process be amended to permit consumer and other stakeholders to make submissions to the draft operating licence.

Recommendation

1. *That the review process be amended to permit consumer and other stakeholders to make submissions to the draft operating licence.*

5. Form of Sydney Water Operating Licence

IPART notes that, whilst the Sydney Water operating licence is largely prescriptive in nature, regulatory instruments have increasingly been moving to more adaptive and preventative forms of management.³ It is proposed that this more recent approach, incorporating the development and implementation of licensing plans, could be adopted to frame the Sydney Water operating licence. In its submission to the *Issues Paper*, Sydney Water indicated that, in principle, it supports a move to this form of licensing.⁴

PIAC is concerned that moves from a largely prescription- to plan-based licence could undermine the rights of consumers by imposing fewer obligations on Sydney Water. As IPART notes, one of the fundamental purposes of the operating licence is to protect the rights of customers who rely on the essential service it provides.⁵ PIAC would not support a change in the form of licensing if there was a prospect that it could diminish such protections.

¹ Independent Pricing and Regulatory Tribunal of New South Wales, *Review of the Operating Licence for Sydney Water Corporation Issues Paper* (2009) 2.

² Ibid 7.

³ Ibid 9.

⁴ Sydney Water, *Submission to the Review of Sydney Water's Operating Licence* (2009) 11.

⁵ Independent Pricing and Regulatory Tribunal of New South Wales, above n1, 32.

PIAC notes that, whilst IPART has provided examples where some prescriptive elements of the existing licence have not achieved the desired outcomes,⁶ evidence has not been presented to suggest that the existing operating licence provisions relating to retail management and customer service have failed in their intent. In the event IPART determines to adopt plan-based licensing, PIAC advocates that the customer and consumer rights and complaint and dispute handling sections of the licence remain exempt from this modification.

PIAC also notes that Sydney Water has expressed concerns about the conditions of the proposed licensing plans, including the requirement that IPART conduct an annual audit of each plan.⁷ In the event that IPART determines to adopt plan-based licensing, PIAC supports the proposal for IPART to audit the adequacy of plans and undertake annual audits to determine compliance with plans. Moreover, PIAC submits that the plans should be publicly available and that consumer groups and other stakeholders should be afforded the opportunity to comment on the adequacy of, and compliance with, these plans.

Recommendations

2. *That the operating licence not adopt a plan-based structure if there is a possibility this will undermine consumer rights and protections.*
3. *That, if a plan-based operating licence structure is adopted, provisions relating to customer and consumer rights and complaints and dispute handling are exempt from this modification.*
4. *That, if a plan-based operating licence structure is adopted, IPART audit the adequacy of the plans and undertake annual audits to determine compliance with plans.*
5. *That, if a plan-based operating licence structure is adopted, the plans are publicly available and stakeholders have the opportunity to comment on the form and content of the plans and Sydney Water compliance with the plans.*

6. Retail supply management

IPART has asked stakeholders to consider whether the retail management and customer service requirements in the current operating licence are adequate. PIAC contends there are issues with the existing obligations and that customers would benefit from enhanced licensing provisions as outlined below.

6.1 Code of practice and procedure on debt and disconnection

PIAC acknowledges and welcomes Sydney Water commitments to improve customer assistance measures, such as facilitating access to Centrepay and the No Interest Loan Scheme (NILS). However, PIAC considers that the framework that guides Sydney Water efforts, including the code of practice and procedure on debt and disconnection, has been inadequate to meet the needs of all customers experiencing difficulty paying their bills.

The code provides that Sydney Water may restrict or disconnect a customer's water supply.⁸ PIAC does not support the disconnection or restriction of water supply to residential households who lack capacity to pay their water bills. Water is an essential service and human right to which all people are entitled and the withdrawal of access can have adverse outcomes for individual and household health and wellbeing. Research commissioned by PIAC in 2008 highlighted that disconnections and flow restrictions can mean children and other householders become anxious or distressed, people are unable to wash themselves, have no clean

⁶ Ibid 11.

⁷ Sydney Water, above n 4, 24-25.

⁸ Sydney Water, *Code of practice and procedure – debt recovery and disconnection of water supply* <www.sydneywater.com.au/Publications/FactSheets/DebtRecoveryAndDisconnectionOfWaterSupply.pdf#Page=1> as at 20 November 2009.

clothes to wear, and have difficulty caring for infants.⁹ PIAC also understands that tenants may be disconnected or have their water flow restricted if landlords neglect to pay water bills. PIAC suggests these are strong grounds to remove the capacity for Sydney Water to disconnect or restrict households who cannot pay their water bills.

The code of practice on debt and disconnection also stipulates the circumstances in which disconnection or restriction may take place. Specifically, it allows Sydney Water to undertake this punitive action if households have failed to make payment arrangements or complied with agreed arrangements.¹⁰ PIAC understands that the lack of definition for the term payment arrangement has led to confusion about exactly what constitutes such an arrangement and, in the case of the use of vouchers, how long this arrangement is deemed to last. PIAC is concerned that this is likely to have led some households to have unfairly experienced disconnection or restriction from water supply.

PIAC notes also that, whilst the code of practice and procedure for debt and disconnection indicates Sydney Water is committed to ensuring disadvantaged customers maintain access to water and sewerage services,¹¹ it is not obliged and neglects to define how Sydney Water must identify customers experiencing disadvantage. Again, PIAC is concerned that this lack of detail may have led customers experiencing difficulty to have been denied access to much needed support.

Moreover, alarmingly, the code of practice and procedure on debt and disconnection is at odds with the customer contract. Whilst the code stipulates that assistance for disadvantaged customers may include deferment of payment and payment via an instalment program,¹² the customer contract indicates that customers have a right to this support.¹³ Again, this may have led customers to miss out on valuable payment assistance and, in some cases, to have experienced water flow restrictions.

PIAC does not know exactly how many Sydney Water customers have experienced flow restrictions but notes that the most recent National Performance Report indicates that the proportion of customers to have had their water supply restricted doubled from 2006-07 to 2007-08.¹⁴ In this same period, the proportion of billing and account complaints also doubled.¹⁵ Since this reporting period, IPART determined that the average Sydney household will experience a 32.6 per cent increase in water bills to 2011-12.¹⁶ PIAC is concerned that, without the protection of an adequate regulatory framework, as the price of water increases more households will experience difficulty paying their bills and, in some cases, the distress of being restricted from water supply.

To safeguard access to water and sewerage services, PIAC proposes the operating licence be modified to require Sydney Water to adopt a best-practice response to customer hardship. This is consistent with IPART's position that the operating licence represent regulatory best-practice.¹⁷ As defined by the *Utility Debt Spiral Project*, a joint community, government and business initiative that identified social and regulatory frameworks and policies to assist people at risk of utility debt, industry best-practice requires utilities to have a hardship policy.¹⁸ PIAC requests that IPART amend the Sydney Water licence to oblige Sydney Water to develop and implement a customer hardship policy. The stated purpose of this policy would be to ensure customers and

⁹ Connell, J., Hill, W., *Cut Off II: The Experience of Utility Disconnections* (2009) 30-31.

¹⁰ Sydney Water, above n 8.

¹¹ Sydney Water Corporation, above n 8.

¹² *Ibid.*

¹³ Sydney Water, *Operating Licence 2005-2010*, Schedule 6.

¹⁴ National Water Commission, *National Performance Report 2007-2008 Urban Water Utilities Part A* (2009) 48.

¹⁵ *Ibid* 42.

¹⁶ Independent Pricing and Regulatory Tribunal of New South Wales, *NSW Water Fact Sheet for Review of Prices for Sydney Water Corporation's water, sewerage and stormwater services* (2008) Appendix 2.

¹⁷ Independent Pricing and Regulatory Tribunal of New South Wales, above n 1, 7.

¹⁸ Committee for Melbourne Utility Debt Spiral Study Reference Group, *Utility Debt Spiral Project* (2004) 221.

consumers experiencing hardship are not disconnected or restricted from water supply due to an inability to pay.

To realise this objective, the new operating licence must require that the customer hardship policy defines customers experiencing hardship, contains the processes to identify customers experiencing hardship – including identification by Sydney Water, self-identification by the customer, and identification by social services such as community centres or financial counsellors – and outlines the processes for early response to customers experiencing hardship. Customers so identified would then access the Sydney Water hardship program.

The operating licence must also require the customer hardship policy to oblige Sydney Water to notify customers about and refer them to government concessions and payment assistance programs, and provide information about the internal and external complaints resolution schemes. So too, it must provide for a review of household water consumption and, where appropriate, personalised assistance to better manage consumption. Best-practice also demands it includes the development of options to assist future payments, such as incentives or discounts.

As noted, the operating licence currently requires the code of practice on debt and disconnection to provide for deferred payment or payment by instalment options.¹⁹ PIAC submits that the operating licence must be amended to require a customer hardship policy that not only provides for the availability of deferred payment and instalment plans, but also dictates that payment plans take into account capacity to pay, and includes how the amount to be paid is calculated, the period over which the customer will pay the agreed amounts, and the amount to be paid in each period. So too, it must state that customers can renegotiate the amount if there is a demonstrable change in their circumstances, indicate when the payment plan has been breached and cancelled, and require written confirmation of alternative payment methods or arrangements. Acknowledging that some customers not experiencing hardship will need the option to pay off their bills by instalments, due to budgeting or one-off issues, PIAC submits that payment plans must not be limited to participants in the Sydney Water hardship program; they must be available to all customers.

PIAC's objections to disconnection and flow restriction notwithstanding, the customer hardship policy must also inform customers that disconnection, restriction, debt collection and legal action will be suspended once consumers are on a payment plan, are participating in the Sydney Water hardship program, or have an outstanding complaint related to the proposed action.

As is proposed for energy retailers under the NSW Electricity Supply Amendment Regulation²⁰ and National Energy Customer Framework,²¹ the new operating licence and customer hardship policy must forbid Sydney Water from disconnecting or restricting water flow unless, in addition to requirements on notification, it has offered customers two payment plans in writing. Research undertaken for PIAC in 2008, which indicated almost half of households who were on payment plans found them unaffordable prior to disconnection or restriction,²² highlights the value of mandating this second opportunity.

The current operating licence compels Sydney Water to include the code of practice on debt and disconnection in its customer contract.²³ PIAC understands that the code has not been included in the contract as such. Rather, the contract refers customers to the code as a separate document. PIAC submits that this complies with the letter but not the spirit of the operating licence and proposes that the replacement customer

¹⁹ Sydney Water, above n 13, 18.

²⁰ *Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation Explanatory Note 2009* (NSW)

²¹ National Energy Retail Rules First Exposure Draft 2009 (Cth) div 4, s 605(2)

²² Connell, J., Hill, W., above n 9, 25.

²³ Sydney Water, above n 13, 18.

hardship policy be appended to the customer contract. Acknowledging that the code is currently available on the Sydney Water website under *Community Assistance*, it is recommended that the replacement policy also be accessible via the *Financial Assistance* web page where customers experiencing difficulty with their bills are likely to seek information and support.

The operating licence also suggests that Sydney Water must disseminate information on its code of practice on debt and disconnection to customers at least once annually via their bills and to any other person upon request.²⁴ PIAC proposes that Sydney Water be obliged to inform customers experiencing hardship, as soon as practicable after identification as customers experiencing hardship, of the existence of the customer hardship policy, and offer a copy of the policy at no expense.

Recommendations

6. *That the operating licence removes provisions permitting Sydney Water to disconnect or restrict the water supply of customers who lack the capacity to pay their water bills.*
7. *That the operating licence be amended to require Sydney Water to develop and implement a customer hardship policy with the stated intent of ensuring customers and consumers experiencing hardship are not disconnected or restricted from water supply due to an inability to pay.*
8. *That the operating licence be amended to ensure the Sydney Water customer hardship policy:*
 - a. *defines customers experiencing hardship;*
 - b. *contains the processes to identify customers experiencing hardship, including identification by Sydney Water, self-identification by customers; and identification by social services;*
 - c. *outlines the processes for early response to customers experiencing hardship;*
 - d. *compels Sydney Water to notify customers about and refer them to government concession and payment assistance programs and provide information about internal and external complaints resolution schemes;*
 - e. *provides for a review of household water consumption and, where appropriate, personalised consumption management assistance;*
 - f. *compels Sydney Water to offer deferred payment and instalment or payment plans;*
 - g. *dictates that payment plans must take into account capacity to pay;*
 - h. *obliges Sydney Water to provide written confirmation of payment plan details including how the amount to be paid is calculated, the period over which the customer will pay the agreed amounts, the amount to be paid in each period, and when the payment plan has been breached and cancelled;*
9. *That the operating licence requires the customer hardship policy to be given to customers upon request, be offered to customers experiencing hardship as soon as practicable after identification as customers experiencing hardship, be appended to the customer contract, and be promoted on the Sydney Water website.*
10. *That the operating licence and customer hardship policy oblige Sydney Water to offer customers two payment plans prior to instigating disconnection or restriction proceedings.*
11. *That the operating licence and customer hardship charter inform customers that disconnection or restriction proceedings will be suspended once they are participating in the hardship program or payment plan or have an outstanding complaint.*
12. *That the operating licence indicates that all customers have the right to access a payment plan.*
13. *That, if the code of practice and procedure on debt and disconnection is retained, the code is amended to define the term 'payment arrangement'.*

²⁴ Ibid.

14. *That, if the code of practice and procedure on debt and disconnection is retained, the operating licence is amended to oblige the code to disclose how Sydney Water will identify customers experiencing disadvantage.*
15. *That, if the code of practice and procedure on debt and disconnection is retained, the code is amended to indicate customers have a right to a payment deferment or instalment program, as per the customer contract.*

6.2 Customer Council

As a member of the Sydney Water Corporate Customer Council, PIAC recognises it as a valuable forum for customers to learn and provide feedback about Sydney Water policies, programs and procedures. PIAC takes this opportunity to thank Sydney Water for inviting it to represent residential customers on the Council.

Beyond residential customers, the operating licence prescribes that the Customer Council include representation from a diversity of customer groups, including, for example, low-income households, people living in rural and urban fringe areas, and local government.²⁵ Unfortunately, the licence neglects to require the inclusion of representatives of Indigenous customers, people with disability, and, acknowledging they are consumers rather than customers of Sydney Water, tenants. PIAC contends that these groups experience water issues particular to their communities and warrant mandated inclusion on the Customer Council.

In the *Issues Paper*, IPART notes that the Hunter Water approach of uploading the agenda for its Consultative Forums to its website in advance of meetings furnishes interested parties with an opportunity to discuss agenda items with Forum members prior to meetings.²⁶ PIAC supports Sydney Water's subsequent commitment to also undertake this process.²⁷

Beyond improving access to the agenda, PIAC believes that Customer Council members should play a greater role in developing the meeting schedule. At present, though members can request agenda items and Sydney Water is amenable to the inclusion of these items, the agenda and meeting time is dominated by issues that stem from the forward plan which the Customer Council Charter suggests is developed *for* the Council.²⁸ PIAC acknowledges that it was not a member of the Customer Council when the current forward plan was developed and the norm may be for Sydney Water to develop the plan in consultation with the Council. Nonetheless, PIAC proposes that the Charter requires the forward plan to be developed *by*, rather than *for*, the Council.

In light of the essential nature of the services provided by Sydney Water, PIAC also advocates the adoption of a specific Social Policy Council to discuss the affordability and accessibility of water and sewerage services for disadvantaged customers and the adequacy of the social programs for customers experiencing hardship. Corporate Customer Council meetings do not provide adequate time to discuss and respond to these issues, and do not include agencies that work directly with hardship customers to provide Sydney Water programs such as the Payment Assistance Scheme (PAS) vouchers and No Interest Loan Scheme (NILS).

Recommendations

16. *That the operating licence be amended to prescribe that the Sydney Water Customer Council includes representatives of Indigenous customers, customers with disability, and tenants.*

²⁵ Ibid 19.

²⁶ Independent Pricing and Regulatory Tribunal of New South Wales, above, n 1, 36.

²⁷ Sydney Water, above n 4, 90.

²⁸ Sydney Water, *Corporate Customer Council Charter* (2006) <www.sydneywater.com.au/CustomerServices/CustomerCouncils/pdf/CorpCustomerCouncilCharter.pdf#Page=1> as at 20 November 2009

17. *That the Customer Council Charter be amended to state that the forward plan will be developed by the Customer Council.*
18. *That Sydney Water be required to convene a Social Policy Council to discuss issues and make recommendations about affordability of, and accessibility to, water, including social programs.*

6.3 Customer service indicators

IPART suggests that the customer service indicators contained within the Sydney Water operating licence should be aligned and rationalised for consistency with the national performance indicators as defined by the National Water Initiative (NWI) agreement.²⁹

One of the proposed changes to the customer service indicators is the withdrawal of data on the number of customers. With the caveat that each report must include a statistic that identifies the total number of Sydney Water customers and that the number per thousand in each indicator category is provided to one decimal place, PIAC agrees that it is appropriate for Sydney Water to report on each indicator category by the number per thousand customers, as proposed by the NWI performance indicators, rather than the exact number of customers in each indicator category.

Beyond this, PIAC does not support the proposal that Sydney Water customer service indicators be aligned and rationalised with the national performance indicators defined by the NWI agreement. Whilst the NWI indicators provide a useful minimum standard, they omit a range of additional data that is essential for determining and comparing the accessibility and affordability of water services. PIAC strongly agrees with Sydney Water's suggestion that existing indicators should be retained where they are of value and interest to the community.³⁰ PIAC finds each of the customer service indicators in Schedule 2 of the operating licence to be of value and interest.

Moreover, PIAC contends there would be value in obliging Sydney Water to collect and report additional information. Namely, the number of customers per thousand that access the Sydney Water hardship program and each of the payment assistance and water efficiency programs. Examples include Centrepay, the No Interest Loans Scheme, Water Fix and the Home Maintenance service. PIAC also suggests that Sydney Water be mandated to report on the number of customers per thousand who are denied access to the hardship program and social and water efficiency programs.

Finally, PIAC supports reporting on indicators related to complaints, flow restrictions, disconnections, legal actions, access to hardship program and take up of payment assistance and water efficiency programs by pension status, language spoken at home and Aboriginal and Torres Strait Islander status. Collecting and reporting this data would reveal whether there was an over or under representation of different socio-economic, cultural and linguistic groups within categories above. PIAC notes that not-for-profit organisations are often required to report such data to government departments to assess the equity of access to essential community services. Given the status of water as an essential service, it would be appropriate for Sydney Water to do likewise.

Recommendations

19. *That the new operating licence retains the customer service indicators in Schedule 2 of the existing operating licence and adds indicators on the proportion of customers per thousand who access and are denied access to the customer hardship program and each payment assistance and water efficiency program.*

²⁹ Independent Pricing and Regulatory Tribunal of New South Wales, above n 1, 42.

³⁰ Sydney Water, above n 4, 27.

20. *That the customer service indicators be amended to include indicators related to complaints, flow restrictions, disconnections, legal actions, access to the hardship program, and take up of payment assistance and water efficiency programs by pension status, language spoken at home, and Aboriginal and Torres Strait Islander status.*

6.4 Complaint and dispute handling

Acknowledging that the clause on internal complaint handling procedures in the operating licence currently refers to an out of date Australian Standard, PIAC supports the call from both IPART³¹ and Sydney Water³² to update this clause.

7. Customer contract

PIAC notes that the *Review of the Operating Licence for Sydney Water Corporation* also includes a review of the customer contract.³³ IPART has asked stakeholders to assess whether the existing customer contract effectively addresses customer protection issues. In its submission to IPART, Sydney Water indicated it proposes minor changes to the contract. PIAC offers the following comments on the existing contract and proposed changes.

7.1 Responsibility to pay the account

PIAC supports the proposed change to Section 4.1 of the customer contract that stipulates customers are exempt from paying the amount of their account by the specified date on the account where other payment arrangements have been made,³⁴ but suggests the type of payment arrangements that activate this caveat be identified.

Recommendation

21. *That Section 4.1 of the customer contract be amended to indicate that customers are exempt from paying the amount of their account by the specified date where other payment arrangements have been made and that Section 4.1 identify the type of payment arrangements that activate this caveat.*

7.2 Your account

Section 4.4.2 currently obliges Sydney Water to ensure that customer accounts contain details of the payment assistance available.³⁵ Sydney Water proposes that this be changed so that Sydney Water only need provide details of the availability of payment assistance.³⁶ PIAC believes that the best interests of customers experiencing difficulty paying their bills are served when accounts include details about payment assistance such as vouchers and pensioner water rebates, and advises that this proposal be rejected. Moreover, PIAC suggests that accounts contain details of water efficiency programs.

As per electricity accounts in NSW, PIAC also proposes that Sydney Water accounts be required to include the amount of any arrears, the due date for payment of arrears, the amount of any credit received, and any amount deducted, credited or received under any named Government funded rebate or relief scheme or any payment plan. Moreover, to ensure customers from linguistically diverse backgrounds have access to account and related details, there must be an obligation on Sydney Water, as there is on NSW electricity retailers, to provide information on accounts in community languages – languages to be determined by the Customer Council –

³¹ Independent Pricing and Regulatory Tribunal of New South Wales, above n 1, 34.

³² Sydney Water, above n 4, 91.

³³ Independent Pricing and Regulatory Tribunal of new South Wales, above n 1, 37.

³⁴ Sydney Water, above n 4, 134.

³⁵ Sydney Water, above n 13, 60.

³⁶ Sydney Water, above n 4, 135.

about the availability of interpreter services for the languages concerned and telephone numbers for the services.³⁷

Section 4.4.5 indicates that Sydney Water may charge interest on overdue account balances.³⁸ Whilst it is understood that interest is often waived for customers experiencing hardship, PIAC understands that some customers experiencing hardship have had to pay interest on their overdue accounts. PIAC deems this is an unfair impost and proposes the customer contract be amended so that customers identified as experiencing hardship do not have to pay interest on overdue accounts.

Sydney Water proposes changing Section 4.4.5 so that it may choose not to accept a personal cheque from a customer who has previously paid by a cheque that was subsequently dishonoured.³⁹ PIAC contends that this provision could adversely and unfairly affect customers who regularly pay by cheque but have, due to unforeseen financial or other difficulties, inadvertently presented one cheque that is then dishonoured. This transgression does not justify cancellation of this payment method and this proposition should be rejected.

Recommendations

22. *That Section 4.4.2 of the customer contract continue to state that Sydney Water will ensure customer accounts contain details of the payment assistance available.*
23. *That Section 4.4.2 of the customer contract be amended to oblige Sydney Water to ensure customer accounts include the amount of any arrears, the due date for payment of arrears, the amount of any credit received, and any amount deducted, credited or received under any Government funded rebate or relief scheme or any payment plan.*
24. *That Section 4.4.2 of the customer contract be amended to oblige Sydney Water to provide information on accounts in community languages, to be determined by the Customer Council, about the availability of interpreter services for the languages concerned and telephone numbers for the services.*
25. *That Section 4.4.5 of the customer contract be amended to state that Sydney Water will not charge interest on overdue accounts to customers experiencing hardship.*
26. *That Section 4.4.5 of the customer contract not be amended to allow Sydney Water to refuse to accept payment by personal cheque.*

7.3 Notification of price variations

Proposed amendments to Section 4.9 provide that Sydney Water must publish variations to its charges and provide details on customer accounts, and that variations may commence on either the first day of the next quarter or any other date nominated by Sydney Water after it has published the change.⁴⁰ To maximise customer awareness of price changes, PIAC advocates that the customer contract advises that the publication of variations must be in newspapers circulating in the jurisdiction where the change is to take effect. Moreover, it is recommended that charges be published 20 business days prior to any change taking effect so that consumers have the opportunity to be informed in advance of price increases. The publication of changes on the Sydney Water website would also assist in making this information available to all consumers.

Recommendation

27. *That Section 4.9 of the customer contract is amended to advise that variations to prices and charges will be published in newspapers circulating in the jurisdiction where the changes are to take effect and that variations will be published 20 business days prior to any change taking effect.*

³⁷ Electricity Supply (General) Regulation 2001 (NSW) div 4 s 24.

³⁸ Sydney Water, above n 4, 135.

³⁹ Ibid.

⁴⁰ Ibid 136.

7.4 Other costs

Section 4.10.1 indicates that Sydney Water may charge customers an administrative fee set by IPART where payment of an account is dishonoured or declined.⁴¹ As with the application of interest, PIAC deems this an unfair burden for those customers already experiencing difficulty paying their bills and proposes that the customer contract must dictate that dishonour or declined payment fees shall be waived for customers experiencing hardship.

Recommendation

28. That the Section 4.10.1 of the customer contract is amended to state that Sydney Water will not charge dishonour or declined payment fees to customers experiencing hardship.

7.5 Payment difficulties and account relief

Section 5 of the contract informs customers of their rights when they experience difficulty paying their accounts.⁴² PIAC recommends that this section be amended to inform customers of their right to access a hardship program if they have self-identified or been identified by Sydney Water or a social service as experiencing financial hardship.

Amongst other rights, Section 5.1 informs customers that, if they are unable to pay their account, they have the right to receive information on alternative payment arrangements and negotiate an affordable amount on an agreed instalment plan.⁴³ PIAC suggests that this section be augmented to inform customers that, as part of a payment plan, they have the right to information on how the amount to be paid is calculated, the period over which the customer will pay the agreed amounts, and the amount to be paid in each period. It must also state that customers can renegotiate the amount if there is a demonstrable change in circumstances, indicate when the payment plan has been breached and cancelled, and require written confirmation of alternative payment methods or arrangements. PIAC notes that, whilst a payment plan is a key element of the hardship program, customers that are not accessing the hardship program must also have the right to enter into a payment plan.

PIAC recommends that Section 5.1 also be amended so that customers experiencing hardship have a right to receive information on, and, where appropriate, support with, water efficiency. Such initiatives assist households to reduce their water bills and overcome ongoing financial hardship.

Whilst Section 5.2 currently specifies that Sydney Water will confirm an instalment plan in writing upon request,⁴⁴ PIAC requests that this be re-written so that Sydney Water must provide written confirmation of instalment or payment plans within 10 business days. This would serve to both remind customers and prove the existence of the arrangement.

Recommendations

29. That Section 5 of the customer contract be amended to inform customers of their right to access a hardship program if they have self-identified or been identified by Sydney Water or a social service as experiencing financial hardship.

30. That Section 5.1 of the customer contract be amended to oblige Sydney Water to provide written confirmation of payment plan details including how the amount to be paid is calculated, the period

⁴¹ Sydney Water, above n 13, 62.

⁴² Ibid 63.

⁴³ Ibid.

⁴⁴ Ibid.

over which the customer will pay the agreed amounts, the amount to be paid in each period, and when the payment plan has been breached and cancelled.

31. *That the customer contract indicate that all customers have the right to access a payment plan.*
32. *That Section 5.1 of the customer contract be amended so that customers experiencing hardship have a right to receive information on, and, where appropriate, support with, water efficiency.*
33. *That Section 5.2 of the customer contract be amended to oblige Sydney Water to provide written confirmation of instalment or payment plans within 10 business days.*

7.6 Disconnection

As noted above, PIAC does not support the disconnection or restriction of supply when customers lack the capacity to pay. In the event the new operating licence continues to permit these punitive actions, PIAC proposes amendments to disconnection and restriction notices and limitations as follows.

7.7 Notice of disconnection or restriction of supply of water

Section 6.2 of the customer contract specifies that reminder notices will provide an explanation of alternative payment arrangements.⁴⁵ PIAC advocates that reminder notices include more detail about available assistance including information about the customer hardship program, payment plans, water vouchers and government concessions and rebates. Disconnection warnings must also include information about the hardship program, payment plans, and government concessions and rebates.

PIAC strongly objects to the proposal to amend Section 6.2 so that Sydney Water *may* rather than *will* send a disconnection warning and *may* rather than *will* send a final notice.⁴⁶ Bills can be lost in the mail, received by someone other than the account holder, misplaced or forgotten by the account holder, or given a low priority due to family, work, health and other issues. Reminder and final notices represent vital safeguards against debt and disconnection or restriction of water supply and must remain a requirement of the customer contract.

PIAC also advises that reference to further contact with customers prior to disconnection or restriction⁴⁷ be amended to require that Sydney Water makes its best endeavours to contact customers either in person or by telephone. Contact by mail, as is currently permitted, provides no guarantee that the customer has received or understood the disconnection warning or final notice, nor does it grant customers an opportunity to identify themselves as experiencing hardship. Furthermore, in acknowledgment that not all customers are at home during business hours due to work and other commitments, PIAC suggests that Sydney Water be obliged to attempt one out-of-hours contact before undertaking to disconnect or restrict water supply.

PIAC notes that Sydney Water proposes a new section to this part of the contract that indicates if customers receive an account for a new billing period that contains an overdue amount from a previous billing period, they may be disconnected or restricted from supply on the arrears amount after being issued with the appropriate notices.⁴⁸ PIAC submits that, to avoid customer confusion, the account in question must clearly state the overdue amount and the due date.

Recommendations

34. *That Section 6.2 of the customer contract be amended to require that reminder notices and disconnection warnings include information about available assistance including information about*

⁴⁵ Ibid 64.

⁴⁶ Sydney Water, above n 4, 139.

⁴⁷ Sydney Water, above n 13, 64.

⁴⁸ Sydney Water, above n 4, 139.

the customer hardship program, payment plans, water vouchers and government concessions and rebates.

35. *That Section 6.2 of the customer contract not be changed, so the provision of disconnection warnings and final notices remains mandatory.*
36. *That Section 6.2 of the customer contract that relates to further contact be amended to oblige Sydney Water to make its best endeavours to contact customers either in person or by phone rather than by mail.*
37. *That Section 6.2 of the customer contract be amended to oblige Sydney Water to attempt one out-of-hours contact before undertaking disconnection or water flow restriction procedures.*

7.8 Limitations on disconnection or restriction

Section 6.5 of the customer contract indicates that households that have entered into and are complying with a payment assistance arrangement will not be disconnected or restricted.⁴⁹ As noted in reference to the code of practice on debt and disconnection, PIAC understands this clause of the customer contract has led to confusion about exactly what constitutes a payment assistance arrangement and, in the case of the use of vouchers, how long this arrangement is deemed to last. PIAC recommends that this section be re-drafted to preclude disconnection or flow restriction for households who are participating in the Sydney Water customer hardship program.

PIAC also proposes that this section be amended to oblige Sydney Water to offer two payment plans in writing, as is currently proposed for NSW energy retailers,⁵⁰ before customers may have their water supply disconnected or restricted.

Section 6.5 also prescribes the times and days when disconnection or flow restriction must not occur.⁵¹ To both comply with industry best-practice and allow customers adequate time to contact Sydney Water, PIAC requests this provision be changed so that disconnection and restriction cannot take place after 2pm on a weekday. Moreover, in the same way that households cannot be disconnected or restricted from supply on a Friday, to ensure that customers have the opportunity to contact Sydney Water to arrange early reconnection, PIAC advocates that Sydney Water not be permitted to disconnect or restrict supply on the day before a public holiday.

Finally, as is currently the practice for energy retailers in some jurisdictions, PIAC proposes that households not be disconnected or restricted for arrears below a threshold to be determined by the regulator. This would avoid households going without an essential service on account of insignificant debts. PIAC research into the experience of utility disconnections revealed that 14 per cent of households were disconnected for arrears of \$200 or less.⁵²

Recommendations

38. *That Section 6.5 of the customer contract be amended to preclude disconnection or flow restriction for households who are participating in the Sydney Water customer hardship program.*
39. *That Section 6.5 of the customer contract be amended to oblige Sydney Water to offer two payment plans in writing before customers may have their water supply disconnected or restricted.*
40. *That Section 6.5 of the customer contract be amended so that disconnection and restriction cannot take place after 2pm on a weekday or the day before a public holiday.*

⁴⁹ Sydney Water, above, n 13, 65.

⁵⁰ *Draft Electricity Supply (General) Amendment (Customer Hardship) Regulation Explanatory Note 2009* (NSW)

⁵¹ *Ibid.*

⁵² Connell, Hill, above n 9, 22.

41. *That the customer contract be amended to state that customers cannot be disconnected or restricted from water supply for arrears below a threshold to be determined by IPART.*

7.9 Redress

PIAC supports the proposal to add Section 7.x so that customers who experience three or more unplanned water service interruptions in a 12 month period be entitled to a rebate after the third event, equal to the whole water service charge less any concessions for the next four quarters.⁵³

The existing contract indicates that, in the event of loss or damage to customer property or person that may be the result of a failure by Sydney Water to comply with the customer contract, Sydney Water will advise customers on how the claim will be investigated, the proposed response time for a representative to visit the premises and make a decision, and the name and contact details of the representative to advise of claim progress, within five working days. PIAC does not support the Sydney Water suggestion to withdraw the requirement to respond within five working days.⁵⁴

Recommendations

42. *That, as per the Sydney Water proposal, the customer contract be amended so that customers who experience three or more unplanned water service interruptions in a 12 month period be entitled to a rebate after the third event equal to the whole water service charge less any concessions for the next four quarters.*
43. *That Section 7.5 of the customer contract continue to require that Sydney Water responds to claims for damages within five days.*

7.10 Meter testing

PIAC has not calculated the significance of the impact but questions the justification for changing the obligation on Sydney Water to act if a meter test indicates that the meter is over recording by over 4 per cent as opposed to the existing reference to over 3 per cent.⁵⁵

Recommendation

44. *That IPART reject the proposal to change the point at which Sydney Water is obliged to act if a meter is over recording, if this proposal is deemed to have a material affect on customers whose meter is over recording by 3 to 4 percent .*

8. Conclusion

The Sydney Water operating licence and customer contract are fundamental elements of the regulatory framework that safeguard access to an adequate supply of water for Sydney households. As such, PIAC deems it crucial that proposed changes to both the form and content of the licence uphold the rights and protections of Sydney Water customers.

PIAC is uncertain but concerned about the potential impact of the proposed plan-based licensing framework. If there is a possibility that this regulatory structure could undermine existing standards and safeguards for customers, PIAC contends it should not be introduced or, at a minimum, should not apply to licence provisions relating to customer rights and protections.

⁵³ Sydney Water, above n4, 143.

⁵⁴ Ibid.

⁵⁵ Ibid 151.

Whilst supporting the current form of the operating licence, PIAC submits there is need to improve the licence content. Requirements relating to the code of practice on debt and disconnection, the Customer Council, customer service indicators, and customer contract must all be amended to better serve Sydney Water customers and consumers.

PIAC thanks IPART for the opportunity to comment on the *Review of the Operating Licence for Sydney Water Corporation* and hopes that the proposals above can be incorporated into the next Sydney Water licence and customer contract.