



**On good terms: Submission to IPART's Review
of the Customer Contract for Hunter Water**

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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; and
- 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 (then) Law Foundation of New South Wales, with support from the 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 the Industry and Investment NSW for its work on energy and water, 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.

Energy + Water Consumers' Advocacy Program (EWCAP)

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 EWCAP from a community-based reference group the members of which 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.

Introduction

PIAC welcomes the opportunity to participate in the review of the Customer Contract for Hunter Water Corporation. This submission answers a selection of questions posed by the Independent Pricing and Regulatory Tribunal (IPART) in the *Review of the Customer Contract Hunter Water Corporation: Issues Paper*.¹ IPART notes that 'the Customer Contract is to define the relationship between Hunter Water and its customers'.² Accordingly, PIAC provides a response where an opportunity exists to improve this relationship through strengthened consumer protections and more transparent delivery of information.

Hunter Water's rebate strategy

In the Issues Paper, IPART notes that Hunter Water proposes to link rebates under the Customer Contract to systems performance standards that came into effect on 1 July 2010.³ In developing this submission, PIAC found that neither these performance standards nor an outline of rebates offered by Hunter Water under the Customer Contract were easy to locate on the Hunter Water website. PIAC contends that this information should be easily accessible through Hunter Water's website and available in other formats upon request.

Is Hunter Water's proposal to apply rebates to the water usage component of a bill reasonable?

PIAC supports Hunter Water's proposal to apply rebates against the usage component of a bill so that tenants who experience the inconvenience of interruptions are compensated.

Are the proposed rebate levels, and method of calculation of rebates reasonable?

In principle, PIAC supports the proposed method of calculation of the rebates. The prospect of the rebate increasing with any water price rise, due to the rebate being linked to a kilolitre allowance, is viewed as a positive step.

PIAC advocates for a standard approach in the delivery of consumer protections. As the value of the rebate is comparable with rebates offered by Sydney Water,⁴ PIAC considers that the rebates are set at a reasonable level. PIAC notes, however, that Hunter Water's proposal lacks clarity about how rebates are applied if multiple rebate triggers occur. For example, Hunter Water's rebate table states that customers are eligible for a \$28 rebate under unplanned interruptions if they:

Experience three or more unplanned interruptions between 5:00am, and 11:00pm in a financial year, each exceeding 1 hour in duration, due to a failure of our water system.⁵

There is no explanation as to whether the rebate is applied once after the consumer has experienced three or more interruptions or per event after three or more unplanned interruptions have occurred. PIAC suggests that outlining eligibility for all rebates on a per event basis would provide greater clarity for consumers.

¹ Independent Pricing and Regulatory Tribunal, *Review of the Customer Contract Hunter Water Corporation: Issues Paper* (2010) <<http://www.ipart.nsw.gov.au>> at 18 October 2010.

² Ibid 3.

³ Ibid 4.

⁴ Sydney Water, *Operating Licence 2010-2015* (2010) 74-75 <<http://www.sydneywater.com.au/Publications/LegislationActs/OperatingLicence.pdf>> at 1 November 2010.

⁵ Hunter Water Corporation, *Customer Contract Review: Submission to the Independent Pricing and Regulatory Tribunal* (2010) 6.

Recommendation

1. *The Hunter Water Customer Contract should be amended to include details of eligibility for all rebates on a per event basis.*

Is it reasonable for the rebate for planned water interruptions to be removed?

PIAC does not support the removal of the rebate for planned water interruptions. Hunter Water asserts that planned interruptions allow for 'essential maintenance or upgrading of assets'.⁶ PIAC agrees with Hunter Water that it is reasonable to interrupt water supply to carry out maintenance and upgrades. However, PIAC does not agree that planned interruptions that carry on for longer than expected time periods should be classified as unplanned interruptions to be dealt with under the rebate for this situation.⁷ PIAC considers that the conditions related to this rebate are unduly harsh. PIAC will address these conditions in answering the following group of questions.

The absence of a rebate for planned interruptions gives consumers no recourse if Hunter Water schedules multiple planned interruptions. PIAC notes that under the terms of Sydney Water's Customer Contract, customers are eligible for a rebate when a planned interruption lasts 'for over five hours' even where customers are given notice.⁸ PIAC contends that it is reasonable to offer consumers compensation when they are faced with long periods of time without water supply. Consumers should also be provided with financial compensation where multiple planned interruptions to their water supply take place. Research by the Water Services Association of Australia established that the frequency of interruptions, whether planned or unplanned, is an important factor taken into account when consumers consider their ability to cope with interruptions.⁹

Hunter Water's assertion that only 13% of consumers surveyed would 'expect a rebate for a planned water interruption if given at least two days notice'¹⁰ is somewhat undermined by the absence of any additional data focusing on expectations of a rebate should planned interruptions occur repeatedly. As multiple interruptions are a source of inconvenience for consumers, whether planned or unplanned, PIAC recommends that consumers who experience more than three planned interruptions in a financial year be eligible for a planned interruption rebate.

Recommendation

2. *The Hunter Water Customer Contract should be amended to include the offer of a planned interruption rebate that is triggered once a consumer experiences more than three planned interruptions in a financial year.*

Is Hunter Water's proposal to only pay rebates for unplanned interruptions that occur between 5:00am and 11:00pm reasonable?

PIAC does not support Hunter Water's proposal to set time parameters regarding eligibility for the unplanned interruption rebate. Water consumers are not a homogenous group and it is difficult to assess the level of inconvenience an interruption between 11pm and 5am may cause across Hunter Water's broad customer base. PIAC notes that Hunter Water draws on its customer survey to demonstrate that only 13% of survey

⁶ Ibid 3.

⁷ Independent Pricing and Regulatory Tribunal, above n 1, 6.

⁸ Sydney Water, above n 4, 74.

⁹ A Speers et al, *Setting and Evaluating Customer Service Standards*, Water Services Association of Australia, 6.

¹⁰ Hunter Water Corporation, above n 5, 3 & 12.

respondents expected a rebate for unplanned shutdowns between 11pm and 5am.¹¹ While this information is useful, it is impossible to assess whether the 287 people who responded to the survey include those who may be more likely to be inconvenienced by overnight interruptions. PIAC considers that older people, people who are unwell, shift workers and people with babies are less likely to be able to adjust their water usage to accommodate interruptions to their water supply. Given that these people are likely to suffer higher levels of inconvenience if their water supply is interrupted between 11pm and 5am, PIAC does not support any proposal that would remove their ability to access a compensatory rebate.

In asking for comment on the provision of a rebate for interruptions that happen between 11pm and 5am, IPART states:

Because the cost of providing rebates is borne by Hunter Water's customer base there are strong arguments for providing rebates only where customers are inconvenienced.¹²

The rebate for the first and second unplanned interruption is not automatic. The Hunter Water Customer Contract states that a consumer 'is eligible' for a rebate for one or two interruptions, whereas after three or more unplanned interruptions the rebate is automatically applied.¹³ Given that a consumer needs to be aware of the unplanned interruption and apply for the rebate, PIAC contends that the cost of providing a rebate for unplanned interruptions between 11pm and 5am is not likely to be burdensome on Hunter Water's broader customer base. PIAC therefore takes the view that there is inadequate evidence to suggest that an extremely minor cost saving to all consumers can justify the erosion of rights to compensation for the small group of consumers who are disadvantaged by unplanned interruptions between 11pm and 5am.

Recommendation

3. *The Hunter Water Customer Contract should be amended to ensure that no time parameters are set as a condition of access to rebates for unplanned interruptions.*

Should Hunter Water not issue rebates for unplanned interruptions where "alternative water supplies" are provided?

PIAC commends Hunter Water for proposing ways to reduce the inconvenience caused by unplanned interruptions through the provision of alternative water sources. However, PIAC contends that alternative water sources must be easily accessible to all consumers and allow consumers to meet a range of needs including hydration, cooking and personal hygiene. Further, PIAC contends that the removal or reduction of the rebate should be contingent on removing or reducing the inconvenience for consumers.

Are Hunter Water's proposed forms of "alternative water supply" reasonable?

Hunter Water has proposed the following forms of alternative water supplies:

- bottled water;
- a tanker connected to the mains providing water supply accessible through customers' taps;
- a standpipe or tanker placed in the street from which customers can collect water.¹⁴

¹¹ Ibid 12.

¹² Independent Pricing and Regulatory Tribunal, above n 1, 6.

¹³ Hunter Water Corporation, above n 5, 17.

¹⁴ Ibid 4.

PIAC submits that the third alternative, a standpipe or tanker placed in a street for water collection, would not present an accessible option for some older people or those with physical disability. Similarly, larger households would face higher levels of inconvenience by having to transport large amounts of water back to their home. Without information on how regularly tankers or standpipes would be placed, PIAC cannot comment on whether this option would be convenient for a broad range of consumers.

Similarly, the first alternative, bottled water, may not provide an accessible alternative supply. It is not clear from the information provided how bottled water would be provided. If the water were to be delivered directly to the home, some accessibility issues would be solved but the inconvenience of being unable to take a shower or run a bath would not be addressed by this option. PIAC considers that for people with health problems and those with small children, the provision of bottled water would not adequately reduce the inconvenience of an unplanned interruption. Therefore, PIAC contends that a reasonable compromise would be to provide a reduced rebate to people in these circumstances.

PIAC supports Hunter Water's proposal to provide water to consumers' taps via a tanker.¹⁵ This option is an accessible method of delivery that is unlikely to present any difficulty or major inconvenience for consumers.

Recommendations

4. *The Hunter Water Customer Contract should be amended to state that where alternative water sources are needed, Hunter Water would aim to provide water via a tanker capable of delivering water to consumer's taps.*
5. *The Hunter Water Contract should include the offer of a reduced rebate for people with health problems, small children and/or special needs, in the event that bottled water is offered as an alternative water source due to an unplanned water interruption.*

Is Hunter Water's proposal to maintain its existing rebate for low water pressure but pay it only for reported and confirmed incidents reasonable?

PIAC notes Hunter Water proposes to align its water pressure standard with Sydney Water's.¹⁶ PIAC welcomes a consistent approach but is unsure why this consistency has not continued in setting conditions for the low water pressure rebate. Under Sydney Water's Customer Contract, customers are offered a rebate to 'a minimum of \$30.00' for 'one event per quarter'¹⁷, whereas Hunter Water proposes to offer the low water pressure rebate of approximately \$28.00 only after customers have experienced 'more than five occasions in a financial year'.¹⁸ The conditions imposed by Hunter Water in this case render the value of the rebate much lower than Sydney Water's rebate when judged on a per event basis. Hunter Water's current contract offers a minimum rebate of \$50.00 to customers who have experienced more than five low-pressure events 'in any 12 month Operating Licence period'.¹⁹

PIAC acknowledges that Hunter Water has proposed changing rebate structures to provide greater equity for renters. Similarly, under the current proposal, using a kilolitre allowance to set the value of the rebate will ensure

¹⁵ Ibid 5.

¹⁶ Ibid 4.

¹⁷ Sydney Water, above n 4, 75.

¹⁸ Hunter Water Corporation, above n 5, 6.

¹⁹ Hunter Water Corporation, *Customer Contract* (2009) 10

<http://www.hunterwater.com.au/files/Customer_Contract_Jun09.pdf> at 5 November 2010.

that as prices rise, the value of the rebate will rise commensurately. For this reason, PIAC does not object to the changes in value to the rebate for low water pressure.

However, PIAC does not support Hunter Water's proposal to only apply the rebate to incidents that are both reported and confirmed. Given that Hunter Water has made changes that reduce the value of the low water pressure rebate, it is reasonable to provide the rebate automatically where a confirmed incidence of low water pressure has occurred. This measure is consistent with the current practice of Sydney Water. For example, Sydney Water's Customer Contract states that 'A rebate will be granted automatically when you are identified through our monitoring'.²⁰

Recommendation

6. *The Hunter Water Customer Contract should be amended to provide that the low water pressure rebate is granted automatically where Hunter Water confirms events of low water and also to provide that it is not contingent on customers reporting a low water pressure event to Hunter Water.*

Additional protections for customers, including those experiencing financial hardship

Should Hunter Water's Customer Contract include similar protections for its customers as provided to Sydney Water's customers in relation to disconnection procedures, features of payment plans and protections for residential customers experiencing financial hardship?

PIAC welcomes any additions to Hunter Water's Customer Contract that will provide additional protections for consumers. Under current proposals, Hunter Water's Customer Contract will include protections for customers experiencing financial hardship, such as waiving interest on overdue amounts; and protection from legal action to enforce the debt.²¹ However, upon reading the contract it is not clear whether Hunter Water is providing assurance that customers who have sought assistance are protected from disconnection or flow restrictions. In discussing disconnection, clause 6.1 of Hunter Water's proposed Customer Contract states:

Please refer to clause 5.1 if you are unable to pay your account. We will make all reasonable efforts to help you pay your account. However if you have not paid the account by the due date and have not made alternative payment arrangements with us, we may at our discretion restrict or disconnect your water supply, or take legal action in order to recover the debt.²²

Clause 5.1 provides information on customer entitlements where they are honouring payment plans but fails to offer any protection from disconnection:

If you are experiencing financial hardship and have entered into, or are in the process of negotiating a payment arrangement with us and honour that arrangement, we will:

- Not take any legal action to enforce the debt or disconnection or restriction of the supply of water to your property.
- Waive interest on the overdue amount for the period of the arrangement.²³

Research commissioned by PIAC has found that disconnections and flow restrictions have a negative impact on

²⁰ Sydney Water, above n 4, 75.

²¹ Hunter Water, above n 5, 13.

²² Ibid 14.

²³ Ibid 20.

people's physical and mental wellbeing²⁴ and PIAC has long advocated that households should not be disconnected from water as a result of inability to pay their water bills.²⁵ PIAC acknowledges that Hunter Water may be offering protection from disconnection in clause 6.1 but the language used in the clauses quoted above does not make Hunter Water's position clear. In contrast, Sydney Water's Customer Contract provides a clearer explanation of their position. Clause 6.2 of Sydney Water's Customer Contract states:

We will not restrict water flow or disconnect supply for a failure to make due payment of money owed to us where:

- You have applied for assistance under the payment plan operated by us and you are complying with agreed terms
- You have notified us that you have sought assistance from a welfare agency and that assistance is imminent.²⁶

Sydney Water's Customer Contract clearly states that customers are protected from disconnection and flow restrictions where they are adhering to an agreed payment plan. PIAC submits that this protection must be an integral part of a customer contract. Additionally, this protection should be clearly communicated to consumers via the Customer Contract.

In a previous submission to IPART regarding Sydney Water's Operating Licence, PIAC recommended that Sydney Water be obliged to offer two payment plans in writing before customers may have their water supply disconnected or restricted.²⁷ PIAC made this recommendation on the basis that electricity suppliers in NSW must offer a consumer two payment plans before initiating disconnection proceedings.²⁸ As research has found that consumers do not always find utility payment plans affordable,²⁹ PIAC takes the view that a renegotiated second payment plan is a valuable form of consumer protection. As a minimum standard, PIAC continues to advocate that customers be offered two payment plans before any disconnection or flow reduction is initiated.

PIAC notes that Hunter Water has made significant additions to the Payment Difficulties clause of their Customer Contract and congratulates it for being proactive in this regard. Some of these additions are based on Sydney Water's Customer Contract and PIAC notes the value of a standard approach across water providers where consumer protections are strengthened.

PIAC's submission regarding Sydney Water's Operating Licence recommended that steps be taken to protect consumers from disconnection where only a small debt owed. PIAC urges IPART to set a minimum debt threshold that must be reached before Hunter Water can instigate disconnection or flow restriction.

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.³⁰

²⁴ Jessie Connell & Wesley Hill, *Cut Off II: The Experience of Utility Disconnections* (2009) 30-31.

²⁵ Mark Ludbrooke *Licence to bill: Submission to IPART Review of the Operating Licence for Sydney Water Corporation* (2009) Public Interest Advocacy Centre 3-4
<<http://www.piac.asn.au/publication/2009/12/091127-ewcap-sub-ipart-review-sydney-water-operating-licence>> at 2 November 2010.

²⁶ Sydney Water, above n 4, 70.

²⁷ Mark Ludbrooke, above n 25, 13.

²⁸ Electricity Supply Regulation 2001 (NSW) s 13A(3)(a).

²⁹ Connell & Hill, above n 24, 134.

³⁰ Mark Ludbrooke, above n 25, 13.

Recommendations

7. *Hunter Water's Customer Contract should be amended to state clearly that customers adhering to payment plans are protected from disconnection and flow restriction.*
8. *Hunter Water's Customer Contract should be amended to give customers the right to be offered a second payment plan if they are unable to meet the terms of an initial payment plan.*
9. *Hunter Water's Customer Contract should be amended to state that customers cannot be disconnected or restricted from water supply for arrears below a threshold to be determined by IPART.*

Should IPART review clause 5.3 of Hunter Water's Operating Licence together with its Customer Contract or wait until the end of term review of the Operating Licence in 2011?

PIAC supports IPART's proposal to review clause 5.3 of Hunter Water's Operating Licence together with the Customer Contract. PIAC notes that Sydney Water's Operating Licence outlines obligations for Sydney Water to 'publish its procedures relating to customer hardship, debt, water flow restriction and disconnection on its website'.³¹ While this information is available on Sydney Water's website, it is not easily located. PIAC notes that Hunter Water's current Operating Licence does not include obligations to make information on hardship, debt, water flow restrictions and disconnection available on its website. PIAC recommends that Hunter Water be obliged to include this information on their website and so that consumers can find this information easily, PIAC recommends that it should be accessible via a clearly titled link on the Hunter Water's website home page.

Recommendation

10. *Section 5.3 of Hunter Water's Operating Licence should be amended to require procedures relating to customer hardship, debt, water flow restriction and disconnection to be accessible via a clearly titled link that is housed prominently on the Hunter Water website's home page.*

Clarification of maintenance responsibility and liability for repair and restoration

Are Hunter Water's proposed amendments to clarify liability for repair and restoration reasonable?

PIAC supports the Hunter Water's proposal to clarify the extent of its responsibility on liability for repair and restoration in its Customer Contract. Hunter Water notes that interactions with customers around damage to property and levels of compensation have at times been 'acrimonious and protracted'.³² PIAC suggests that a consumer education campaign aimed at raising awareness of consumer rights and responsibilities according to the Hunter Water Customer Contract clause 8, Responsibilities for Maintenance and clause 9, Entry onto a Customer's Property for Maintenance, would be most useful in reducing negative interactions between Hunter Water and consumers.

Recommendation

11. *Hunter Water run a consumer education campaign to promote customer rights and responsibilities according to clause 8 and clause 9 of the Hunter Water Customer Contract.*

³¹ Sydney Water, above n 4, 22.

³² Hunter Water, above n 5, 8.

Timing of amendments to customer contract

What period of notice of variation is appropriate for the Customer Contract amendments proposed by Hunter Water?

PIAC has no objection to the period of notice being shorter than six months. The *Hunter Water Act 1991* stipulates that notice of changes to the customer contract must be published 'in a daily newspaper circulating in the area of operations'.³³ PIAC recommends that Hunter Water also place a notice in local newspapers as these publications are free of charge and present an opportunity to make information on changes more widely accessible.

Recommendation

12. Notice of change to the Customer Contract should be published in free local papers circulating in Hunter Water's area of operation.

Conclusion

As water is an essential service, the relationship between consumers and Hunter Water is not one of choice but necessity. As the Customer Contract is the tool that defines this relationship PIAC contends that it should assist understanding by using simple, clear terms; and promote equity through the recognition that water consumers have a diverse range of needs and expectations. While PIAC congratulates Hunter Water for proposing some innovative changes to their Customer Contract there is more that could be done to ensure that consumers with particular needs, such as shift workers, are not unduly disadvantaged by the proposed changes.

³³ *Hunter Water Act 1991* (NSW) s 38 (1).