



Review of the Operating Licence for Hunter Water Corporation

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Energy + Water Consumers' Advocacy Program

1. Introduction

1.1 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; 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 receives funding from the NSW Department of Trade and Investment, Regional Infrastructure and Services 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.

1.2 Energy + Water Consumers' Advocacy Program (EWCAP)

EWCAP 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;
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Institute of Sustainable Futures, University of Technology;
- Western Sydney Community Forum; and
- National Seniors.

2. Review of the Hunter Water Operating Licence

PIAC welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal (IPART) *End of Term Review of the Operating Licence for Hunter Water Corporation*.

The purpose of the review is to consider whether to maintain or amend the terms of the current Operating Licence for Hunter Water Corporation with a view to improving Hunter Water's operational efficiency over the next term.¹

Recognising that the Hunter Water Operating Licence is the key regulatory framework governing the relationship between Hunter Water and its customers, the systematic review and evaluation of its performance is imperative to ensuring any new Licence terms provide consistent and improved protection for consumers.

PIAC offers the following comments regarding the scope of the review process, the recommendations to evolve the Operating Licence away from prescriptive standards, and the role and function of the Hunter Water Consultative Forum.

2.1 Scope

IPART has taken an approach to this review that is consistent with the evolution of good regulatory practice for public utilities, and similar to the approach adopted in the review of Sydney Water's Operating Licence in 2009/10.²

IPART notes that, in meeting standards of good regulatory practice, the terms of the Licence should meet the desired outcomes without imposing unnecessary compliance and administration costs and should provide a net benefit to society.³ As such, this review is undertaking an analysis of the costs and benefits of the proposed licence amendments.

IPART has requested that stakeholders take into account this cost-benefit analysis approach for submissions, and has highlighted some key focal areas in the Issues Paper, including amendments to operating standards, review of the Integrated Water Resources Plan, and review of the operational reporting arrangements.

Hunter Water's operations have profound and far-reaching impact on its customers, public health and the environment. PIAC submits that all consumer, environmental and other stakeholders must have equal opportunity and be sufficiently informed to comment on the draft regulatory framework.

This review of Hunter Water's Operating Licence requires analysis of the costs and benefits of complex operational mechanisms and policy information. PIAC is concerned that, although this

¹ IPART, *Review of the Operating Licence for Hunter Water Corporation: Issues Paper* (2011) 1.

² Ibid.

³ Ibid.

cost-benefit approach may encourage the collation of more meaningful data, it could also be a barrier for essential consumer participation.

Many smaller organisations and consumer stakeholders have limited resources and capacity to respond to much of the sought after information. IPART even acknowledges in the Issues Paper that in using a cost-benefit approach, Hunter Water will be in a better position to quantify costs and benefits or provide quantitative indicators than other stakeholders.⁴

PIAC questions whether this balance will favour Hunter Water as it has a stronger capacity to respond, and as such this may impact the integrity of the data collected. For example, the evaluation of costs and benefits on issues that could affect consumer rights and protections may be biased towards the view of the service provider rather than the individuals the discussed amendments will affect.

PIAC recommends that this process of cost-benefit analysis by stakeholders be assessed by IPART in any future implementation, including reviews of Operating Licences or other regulatory frameworks. In any future such reviews IPART conducts, PIAC encourages IPART to consider the means and capacity of all stakeholders to be equally and meaningfully engaged. PIAC suggests that IPART offer further support to consumer stakeholders, through the provision of plain English information, cost-benefit analysis guidelines, and other tools, to maximise consumer participation within these processes.

2.1.1 Customer Contract

As stipulated in the Issues Paper, the Hunter Water Customer Contract will not be included in this review as it was recently subject to a separate public review in November 2010, with the recommended contract changes submitted to the Minister in February 2011.

PIAC is content with this exclusion as we participated in the earlier Customer Contract consultation process. However, PIAC notes that the low-pressure rebate component of the Customer Contract was to be included in this Licence review.

PIAC has made comment to the review of the low-pressure rebate further in section 2.4 of this submission.

2.1.2 Water performance indicators

IPART is currently conducting a separate review to examine performance indicators for major public water utilities, and as such will exclude them from the Hunter Water Operating Licence review.

PIAC participated in the IPART roundtable forum regarding performance indicators in March 2011 and will also be contributing a written submission to this process in June 2011.

⁴ Ibid 6.

2.2 A system-driven licence

In the Issues Paper, IPART considers moving the focus of Hunter Water's Operating Licence away from a prescription-based approach to a more outcome-oriented, system-driven approach. This move has been proposed so Hunter Water's Operating Licence may be brought in line with the recommended systems standard approach in Sydney Water's new Operating Licence, which was reviewed and amended in 2009/10.⁵

It is IPART's contention that in recent years regulatory instruments have increasingly evolved from prescriptive specifications to more adaptive preventive systems standards. IPART proposes that the form of the Operating Licence needs to be more flexible, efficient and effective while meeting legislative requirements. IPART suggests that in the current prescriptive form of Hunter Water's Operating Licence there is not enough flexibility for it to appropriately manage risk.⁶

PIAC offers in principle support to amending the Hunter Water Operating Licence to allow consistency with the amendments made to the Operating Licence of Sydney Water.

However, PIAC notes that in its submission to the review of Sydney Water's Operating Licence in 2009/10, it recommended that Sydney Water *not* adopt a prescriptive based structure. At this time, PIAC expressed concern that a move away from a largely prescriptive based licence may undermine consumer rights and protections by imposing fewer obligations on the service provider.⁷

PIAC does not support any changes that may result in diminishing any existing consumer rights or protection mechanisms. It is PIAC's view that any changes should build on the strength of existing measures, and planned amendments must be made publicly available for consultation.

PIAC supports IPART's current process for the review of Hunter Water's Operating Licence to follow up on issues addressed in submissions directly with stakeholders, and to conduct public consultation on the Draft Operating Licence later this year. However, in evaluating any changes that may affect consumer rights and protection, PIAC recommends that IPART encourage and support consumer participation by taking into account PIAC's recommendations as outlined in 2.1 of this submission.

⁵ Ibid 17.

⁶ Ibid 16.

⁷ PIAC *Licence to bill: Submission to IPART Review of the Operating Licence for Sydney Water Corporation*, (2009) 2.

2.3 Consultative Forum

As part of the Licence review, IPART has sought comment on the effectiveness of the Hunter Water Consultative Forum and its compliance with the *Consultative Forum Charter*.⁸

PIAC commends Hunter Water's full to high compliance against auditable indicators and objectives for Customer and Consumer Rights, as outlined in the *Hunter Water Corporation Operational Audit 2008/09*.⁹

PIAC acknowledges the Consultative Forum's full compliance in meeting membership requirements, including diverse representation from business and consumer groups, low-income households, people living in rural and urban fringe areas and people from non-English speaking backgrounds.

In the future development of the forum, PIAC contends that the Forum's consultative process may be enhanced with representation from Aboriginal communities, older people and people with disabilities. PIAC recognises that these groups are highly vulnerable to policy shifts and service provision changes – often managing competing health, social and cost of living pressures.

By encouraging broader representation in the forum through the inclusion of these groups, the consultative process will gain more specific and unique knowledge of the challenges, barriers, and benefits to any proposed operational or policy shifts across all population groups in the Hunter Water constituency.

2.4 Rebate for low-water pressure

The Hunter Water Customer Contract component of the Operating Licence was publicly reviewed in late 2010. As such, IPART is not revisiting it as part of the Licence review. The one exclusion to this is the rebate for low-water pressure. At the time of the Customer Contract review, IPART said that more time was needed to gather further costing information from Hunter Water in support of the proposed rebate amendment.¹⁰

IPART noted that the difference in the system performance standards for low water pressure between Hunter Water and Sydney Water had historical origins. IPART also found it was reasonable to consider implementing a similar standard for rebate payments to Hunter Water customers as Sydney Water.¹¹

In the submissions to the review of the Customer Contract, both PIAC and the Energy and Water Ombudsman of NSW (EWON) raised concern over the inconsistency between Sydney Water's

⁸ Hunter Water, *Consultative Forum Charter*, (2009).

⁹ IPART, *Hunter Water Corporation Operational Audit 2008/09* (2009).

¹⁰ IPART, above n 1, 5.

¹¹ IPART, *Review of the Customer Contract for Hunter Water Corporation* (2011) 9.

and Hunter Water's respective proposals, in the way the low water pressure rebate was to be applied and the value of the rebate. In the final *Review of the Customer Contract for Hunter Water Corporation*, IPART synthesised EWON and PIAC's analysis as follows:

Sydney Water currently pays a rebate of \$30 for one low pressure event each billing period. The maximum amount in rebates that Sydney Water would pay to a customer for low water pressure over a 12 month period is \$120. In comparison, Hunter Water's rebate is worth \$28 for any 12 month period following 5 low pressure events.¹²

In addition, Hunter Water proposed that 30 minutes of continuous low water pressure be experienced by a customer before the low water pressure event is counted towards the rebate threshold. Sydney Water's equivalent rebate is based on at least 15 continuous minutes of low water pressure.¹³

Based on the complexity of this information, and the short time frame of the Customer Contract review, IPART decided that it was not possible to conduct proper evaluation of the financial impact of aligning Hunter Water's low water pressure rebate more closely with Sydney Water's equivalent rebate. IPART recommended that Hunter Water go ahead with their proposed low-water pressure rebate changes pending further costing information to be provided in the review of Hunter Water's Operating Licence in 2011/12.¹⁴

PIAC has noted that in the Issues Paper for the review of Hunter Water's Operating Licence, there is no further discussion on the low-pressure rebate, other than to acknowledge IPART still requires further information from Hunter Water. PIAC also noted that Hunter Water did not follow up with this information in its submission to this Operating Licence review process. Hunter Water limited its acknowledgement of the Customer Contract in the Operating Licence review as follows:

As a comprehensive public review of the customer contract has just been completed, Hunter Water supports IPART's view that it is unnecessary to revisit the contract as part of this review.¹⁵

PIAC is concerned that issues raised in the initial Customer Contract submission remain unresolved and that the current implementation of the proposed changes as an interim measure are being executed with no review or evaluation, with no scheduled end date.

PIAC would like to see the issue of the low-water pressure rebate followed up as a matter of urgency. IPART has clearly acknowledged in the final report document, the *Review of the Customer Contract for Hunter Water Corporation*, that it required further costing information from Hunter Water as part of the Operating Licence review, and it is PIAC's understanding that this has yet to be provided.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Hunter Water Corporation: Submission to *Review of the Operating Licence for Hunter Water Corporation* (2011) 4.

3. Conclusion

The Hunter Water Operating Licence is a fundamental component of the regulatory framework that safeguards access to an adequate supply of water for households in the Hunter Water area. IPART's review of the Operating Licence is imperative to ensuring any new Licence terms provide consistent and improved protection for consumers.

While PIAC acknowledges IPART's intent to collect more robust data in this review by taking a cost-benefit analysis approach, PIAC believes there are complexities in this approach that create barriers for meaningful consumer participation. PIAC recognises that meaningful consumer participation is key to maintaining the good relationship between Hunter Water and its constituents, and hopes that IPART reviews the process so that any future implementation of this approach supports all stakeholders to contribute.

PIAC looks forward to the update of costing information from Hunter Water on the low-pressure rebate, which has been highlighted as a point for consideration for this review but has yet to be addressed.

PIAC thanks IPART for the opportunity to comment on the *Review of the Operating Licence for Hunter Water Corporation* and hopes that the proposals above will be considered in the development of Hunter Water Operating Licence 2012-17.