



Licensing the public good:

**Submission to IPART's Review of the Operating Licence for
Sydney Water Corporation**

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1. Introduction

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 (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 NSW Trade and Investment for its work on energy and water, and from Allens 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

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;
- St Vincent de Paul (NSW);
- Ethnic Communities Council NSW;
- Tenants Union;
- Physical Disability Council NSW; and
- Salvation Army.

2. A public good approach to Sydney Water's operating licence

2.1 Overview

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to participate in IPART's 2014 *Review of the Operating Licence for Sydney Water Corporation*. As the Issues Paper highlights, Sydney Water's regulatory framework includes matters related to the provision of an essential service, water conservation, environmental impacts and customer protections. PIAC discloses that it is a member of the Sydney Water Customer Council.

Sydney Water's business cannot be defined narrowly in terms of cost efficient delivery of a monopoly service; it exists to fulfill multiple economic, environmental and public purposes. For example, PIAC is highly supportive of Sydney Water including water efficiency as part of its core business. PIAC believes that Sydney Water's operating licence should appropriately reflect these 'public good' purposes. In this, PIAC is strongly supportive in principle of Sydney Water's work to consider the form a best practice regulatory framework could take, focused on customer service outcomes (rather than simply asset performance). PIAC believes such a focus is important given the changes underway in water, including the influences of climate change and technological change. PIAC has seen the consequences in the electricity sector of an overinvestment in assets at the expense of costs to customers and PIAC would welcome the opportunity to be involved in the development of Sydney Water's best practice regulatory framework.

In turn, PIAC disagrees with Independent Pricing and Regulatory Tribunal (IPART)'s view that the licence should only include requirements 'that are necessary, achieve targeted outcomes at least cost, and result in a net economic benefit to society.'¹ While PIAC appreciates that IPART's aim is to reduce duplication between legislative and regulatory requirements and the licence, there are risks to defining the licence too narrowly given its role as the guiding document for the corporation's operations. In the last licence period, Sydney Water has performed with a very high degree of compliance against its licence conditions, which suggests these conditions have not been too onerous. As such, in a number of areas PIAC believes that requirements vital to consumers should continue to be included in the operating licence and in some areas updated requirements should be included.

Recommendation 1

PIAC believes inclusion of public good objectives within Sydney Water's operating licence is essential, especially with regard to water conservation and consumer protection and recommends IPART consider Sydney Water's multiple public good roles in finalising the conditions of its licence.

2.2 PIAC's response to IPART's questions on water quality

Sydney Water's submission details its excellent record of compliance against its operating licence including full compliance on drinking water quality requirements, which is of vital importance to the health and wellbeing of NSW consumers.

¹ Independent Pricing and Regulatory Tribunal of New South Wales, *Review of the Operating Licence for Sydney Water Corporation* (IPART, 2014) 16.

1 Should the operating licence obligations for drinking water be retained, given the presence of similar requirements under the Public Health Act 2010?

Yes. PIAC agrees with IPART that water quality regulation should remain part of the operating licence as water quality is of vital importance to NSW consumers. It would not be in the interests of NSW consumers to see drinking water or recycled water obligations be removed from the licence, rather the licence should reinforce and, where necessary, further detail Sydney Water's legislative obligations.

4 Should the operating licence's water quality obligations for drinking water and recycled water be changed to require Sydney Water to maintain a Water Quality Management System that is consistent with the Australian Drinking Water Guidelines and Australian Guidelines for Water Recycling?

PIAC supports the requirement to maintain a Water Quality Management System that is consistent with the Australian Drinking Water Guidelines and Australian Guidelines for Water Recycling as this is consistent with Sydney Water's current practice. PIAC also supports the removal of the obligation to produce a 5-year Drinking Water Quality Management Plan, provided the Water Quality Management System is updated in consultation with stakeholders.

7 Are there any other obligations that should be included in the operating licence to address the risks associated with drinking water or recycled water quality?

PIAC supports IPART's position that obligations for recycled water quality should be included in the licence and Sydney Water's position that requiring it to implement and maintain a certified water quality management system provides robust and sufficient safeguards for both drinking water and recycled water quality.

2.3 PIAC's response to IPART's questions on infrastructure

PIAC supports a focus on customer service outcomes as a priority that drives system performance and asset management, rather than the reverse, especially given the lessons of overinvestment in infrastructure from electricity networks.

8 Should Sydney Water's operating licence move to a systems standard approach for asset management, as has occurred for other public water utilities?

9 Is ISO 55001:2014 the most appropriate asset management Standard or is there another standard that we should consider?

10 Should the operating licence require the Asset Management System to be certified to ISO 55001:2014 or simply be consistent with this Standard?

PIAC supports the requirement for Sydney Water to develop an Asset Management System certified to ISO 55001:2014 (or its relevant version at the time). PIAC supports certification given Sydney Water's statement that certification 'would not require undue effort or cost'² and given this is consistent with internationally recognised good practice.

² Sydney Water, *Review of the Operating Licence for Sydney Water: Submission to IPART's Water Licensing Issues Paper* (Sydney Water, 2014) 10.

12 What are the costs and benefits of moving to a certified system?

PIAC supports certification as it provides external independent review of Sydney Water's systems to internationally recognised standards and as such, reduced risks for NSW consumers. While there may be some additional costs of certification, PIAC supports these costs given Sydney Water has indicated they would not be excessive and given the additional confidence certification would give consumers in the system. PIAC is also pleased to note that Sydney Water is moving to certified management systems as a matter of course for all key business processes.

13 Should the biennial 'State of the Assets reporting' continue in its current form with the content and format prescribed by IPART in the Reporting Manual or would it suffice for Sydney Water to provide IPART with asset information by providing copies of reports produced as part of the ISO 55001:2014 Asset Management System?

PIAC supports Sydney Water's recommendation that it provides a report on the state of its assets to IPART once every 4 years. Ideally, such reporting would be undertaken more frequently, but given the lifetime of most of the assets and the cost of such reporting, PIAC is willing to accept Sydney Water's recommendation on this matter.

15 What would be the impact of removing the word 'uncontrolled' from the definition in the licence of sewerage overflows? Should any sewerage overflow affecting private property be counted?

PIAC does not support removing the word 'uncontrolled' from the definition in the licence of sewerage overflows as there needs to be a clear distinction between controlled and uncontrolled overflows to provide clear performance information to consumers. There are different implications for controlled and uncontrolled discharges for consumers, with Sydney Water having processes around controlled discharges that seek to reduce risks to public health and the environment. The licence should therefore refer to uncontrolled overflows as a key performance standard.

16 Do the current system performance standards (measures and levels) align with customer expectations and preferences or should we consider changing or adding to these standards?

PIAC supports Sydney Water's proposed minor changes to compliance measures and definitions, namely:

- amending the definition of a water pressure failure from fifteen minutes to one hour duration, to align with design standards and practice
- an ability to seek an exemption from IPART for major, unplanned events that occur during planned water system maintenance activities.³

PIAC agrees with Sydney Water that 'In the longer term, the Operating Licence could adopt system performance standards that are better aligned to customer service outcomes and expectations, rather than focus on only one aspect of customer service (asset performance)⁴ and suggests IPART consider how quickly this could be adopted.

³ Ibid 11.

⁴ Ibid 12.

2.4 PIAC's response to IPART's questions on water conservation

As noted above, PIAC believes that Sydney Water's operating licence should appropriately reflect 'public good' purposes, including water conservation which is of strong interest to NSW consumers, as illustrated by the reduction in household water use over the last 5-10 years. In addition, water conservation has the potential to reduce costs for consumers, both at an individual and system level.

22 Why is it necessary to include water conservation obligations in the operating licence?

23 What are the objectives of water conservation obligations in the operating licence?

PIAC believes the community at large is strongly supportive of water conservation and would be dismayed if IPART did not take this public good objective into account in licencing Sydney Water. Sydney Water states 'Water efficiency is now part of Sydney Water's core business and the current licence requirements no longer drive our effort in this field'⁵ which suggests that the licence requirements could be updated to drive further performance and innovation in this area.

26 Should the operating licence require Sydney Water to develop a protocol with the Metropolitan Water Directorate, which outlines Sydney Water's roles and responsibilities in developing and implementing the Metropolitan Water Plan? If so, what constraints or parameters should be put around this requirement?

PIAC supports this proposed requirement given the important role of the Metropolitan Water Plan as the key instrument to manage the supply-demand balance, including preparedness for and response to drought and other extreme weather events. It makes sense for the licence to formalise the relationship between Sydney Water and the Metropolitan Water Directorate through the requirement for a protocol between the two organisations.

27 What are your views on our preliminary position in regard to water conservation requirements in the operating licence?

PIAC is unconvinced of the need to remove water conservation requirements especially as Sydney Water's own research shows that 'water-saving help' is something customers expect Sydney Water to be delivering as a matter of course⁶. However, rather than including an easily met and out-of-date target, PIAC supports a quantitative water efficiency target or set of targets that would be developed as part of the Metropolitan Water Plan, in consultation with stakeholders. PIAC does not seek to specify the nature of this target, other than it should go further than Sydney Water's suggestion of a generic obligation relating to water efficiency. PIAC's recommendation is that there is not only a specialised multi-criteria decision framework to guide further investment in water efficiency (see below), but that there is an appropriate quantitative target or targets which inform consumers about what Sydney Water is aiming to achieve in water efficiency.

Recommendation 2

PIAC recommends Sydney Water develop a new target for water use consistent with the Metropolitan Water Plan, as part of the development of that Plan.

⁵ Ibid 13.

⁶ Ibid 65.

28 What water conservation requirements should be included in the new operating licence?

PIAC is supportive of Sydney Water's development of a specialised multi-criteria decision framework to guide further investment in water efficiency, especially given that it aims to ensure public good benefits such as energy savings, avoided/delayed infrastructure investment and system peak reduction are included. This is consistent with the appropriate consideration of broader risks and benefits required by Sydney Water's legislative obligations.

Recommendation 3

PIAC supports Sydney Water's recommendation that the licence require Sydney Water to develop a specialised multi-criteria decision framework to guide further investment in water efficiency. PIAC recommends such a framework be developed in consultation with representatives of consumer and environment organisations.

PIAC also supports Sydney Water's suggestion for a water efficiency licence condition, with the exception of the clause related to commercial viability. This exception may not be appropriate in all conditions, especially when there are uncommercial public health or environmental benefits that may be important grounds for investing in water efficiency initiatives.

Recommendation 4

PIAC supports a slightly amended version of Sydney Water's suggested water efficiency licence condition: that Sydney Water:

- should promote and encourage water efficiency and recycling approaches in its area of operations*
- must develop and maintain a multi-criteria decision framework to identify opportunities to invest in water efficiency initiatives*
- must determine its economic level of leakage (ELL) and apply the ELL to its leakage management program*
- will use its best endeavours to develop and comply with a roles and responsibilities protocol with Metropolitan Water Directorate for the development and implementation of the Metropolitan Water Plan.*

2.5 PIAC's response to IPART's questions on environment

PIAC is strongly supportive of Sydney Water's aims to enhance the liveability of Sydney by preventing pollution and providing services that protect and enhance the environment⁷. PIAC also notes that Sydney Water has had an Environmental Management System (EMS) in place for almost a decade, including public reporting on its environmental performance.

29 Should we continue to require Sydney Water to maintain an Environmental Management System certified to AS/NZS ISO 14001:2004? 64

PIAC absolutely supports this requirement as an ISO 14001 Environmental Management System represents standard practice internationally for corporations such as Sydney Water that have a major impact on the environment. In addition, it would cause a loss of confidence by consumers in the regulatory system if a robust and well functioning EMS was no longer a requirement for Sydney Water.

⁷ Ibid 70.

30 As Sydney Water is required to implement an Environmental Management System, is there any additional benefit in producing a 5-year Environmental Management Plan?

PIAC supports the proposed removal of the 5-year Environmental Management Plan (EMP) provided that Sydney Water is required to prepare forward plans outlining its environmental objectives and targets, which it states is an inherent part of an EMS itself. Such forward plans should be developed in consultation with stakeholders. PIAC recognises the EMP is a legacy requirement and may be a duplication of activity with the preparation and maintenance of the EMS.

Recommendation 5

PIAC recommends forward plans outlining environmental objectives and targets should be developed in consultation with stakeholders.

2.6 PIAC's response to IPART's questions on customer rights

PIAC is pleased to see the high compliance with regard to customer and consumer rights requirements as detailed in Sydney Water's submission. PIAC regards these areas as ones where Sydney Water's performance is generally superior to that of counterparts in the energy industry, especially in regards to hardship programs. As such, PIAC is not surprised to see that customer satisfaction with the overall quality of Sydney Water's service is the highest it has been in five years.

32 Is Sydney Water's customer contract easy to comprehend and can it be enhanced in any way?

The Sydney Water Customer Contract covers a wide range of issues relating to the rights and responsibilities of both Sydney Water and customers in relation to the supply of water, storm water and wastewater services. Because the contract is a legal agreement and covers a wide range of issues, PIAC appreciates there are limits on how short it can be.

PIAC takes the view that within these parameters, the current customer contract should seek to be as accessible as possible to residential consumers (who are not lawyers or other professionals who deal with such agreements). For example, the use of headings such as 'What services does Sydney Water provide?' help consumers find information that addresses questions they may have. In this context, the Customer Contract also serves as a potential reference source for those residential customers who are capable of navigating contracts.

However, PIAC notes that the Customer Contract is still a 40-plus page document that includes numerous cross-references. As a result, PIAC does not believe it would be accessible to many consumers with lower literacy or who do not speak English as a first language. Accordingly, PIAC recommends that Sydney Water produce a 'Guide to the Customer Contract' that is much shorter and uses simpler language. From PIAC's examination, the information currently available on Sydney Water's website does not address this need.

The availability of Sydney Water staff to answer customers' questions about the contract is also a key facet of the accessibility of the customer contract. This availability is a function of Sydney Water's broader approach to customer service. PIAC also notes that this issue is addressed in the contract, including the availability of interpreter and TTY services.

Recommendation 6

PIAC recommends that IPART encourage Sydney Water to produce a short 'Guide to the Customer Contract' to help customers with lower literacy levels to understand the rights, roles and responsibilities of parties to the agreement.

PIAC is concerned about Sydney Water's proposal to remove prescriptive requirements for information that it must include on its bill. While PIAC supports the bills being easy for customers to comprehend, we would also like to see the requirement for minimum information to be included on bills to be retained in the customer contract, to maintain industry best practice.

Recommendation 7

PIAC recommends that IPART require sufficient information to be included on customer bills to ensure customers can comprehend and question the service they have been billed for.

33 Would it be beneficial to amend the Sydney Water Act 1994 to eliminate the difficulties associated with varying the customer contract? Further, what should be done in the interim?

PIAC is concerned that if Sydney Water has the ability to vary Customer Contract within a licence term, this may mean that Sydney Water can introduce contractual changes outside of the regulatory approval process. PIAC recommends that key customer protections continue to be guaranteed in legislation or, at the least, included in the operating licence and retained in the Contract.

34 Are the current hardship provisions in the operating licence and customer contract sufficient?

PIAC finds the hardship provisions in Sydney Water's operating licence to be broadly acceptable and takes the view that they compare well with the equivalent provisions in relation to energy suppliers. As well as the specific and detailed elements of the hardship program that are contained in the customer contract, PIAC particularly welcomes the statement that where customers are having difficulty paying their bills 'all reasonable effort will be taken by [Sydney Water] to provide assistance to you' (Customer contract, Clause 5.1).

If Sydney Water's business practices and culture give effect to this intention, PIAC is confident that hardship customers will have options to continue with unrestricted water flows. In PIAC's view, Sydney Water currently has an institutional culture that seeks to ensure that all customers retain access to essential water services. However, PIAC notes that this could change and that minimum standards for hardship programs should continue to be outlined in the Customer Contract. Accordingly, PIAC does not support any reduction in the protections for hardship customers contained in Sydney Water's Customer Contract or operating licence.

Above and beyond Sydney Water's contract and hardship provisions, PIAC considers that there is a need for a consistent set of consumer protections applicable to the water industry as a whole, similar to the National Energy Consumer Framework (NECF). It is inefficient for the industry to develop consumer protections on a business-by-business basis and it also may result in inequitable outcomes for consumers. PIAC would be delighted to be involved with a process to develop such a set of consistent water consumer protections.

Recommendation 8

PIAC recommends that IPART consider how an equivalent set of consumer protections to the National Energy Consumer Framework (NECF) could be developed for the water industry.

35 Is Sydney Water's Customer Council working effectively and how could its membership and community involvement be further improved?

PIAC is a member of the Sydney Water Customer Council. On the whole, PIAC considers that the Customer Council works effectively, allowing consumer representatives to engage with Sydney Water, including senior management (meetings are chaired by Sydney Water managing Director Kevin Young, where possible). The Customer Council receives briefings about issues and processes currently facing Sydney Water, such as the development of the operating licence submission to IPART. Where issues are complex, Customer Council members are invited to participate in out-of-session discussions with Sydney Water to provide an opportunity to cover all facets of a particular topic in the necessary detail.

Customer Council members have also been invited to attend forums with consumers run by Sydney Water. These events provide members of the Customer Council with the opportunity to hear the views of other consumer groups (that they may not directly represent).

PIAC also sits on the customer councils of a number of energy networks and retailers. Broadly speaking, PIAC believes that Sydney Water's Customer Council represents the benchmark for the effective operation of such a group. Accordingly, PIAC believes that the opportunity exists for Sydney Water to offer assistance to bodies including the NSW electricity networks to improve the operation of their own Customer Councils. While not a core part of delivering water services, PIAC considers that other utilities (which are not in direct competition) could benefit from sharing information about effective consumer engagement.

Changes to overdue account balance provisions

PIAC does not support changes to the contract to enable charging of late payment fees. PIAC considers such fees are regressive, impacting low-income and vulnerable consumers the most.

PIAC notes that Sydney Water proposes that any late payment fee be set by IPART at the next price determination. PIAC believes that pricing determinations are a more appropriate forum than licence reviews for the consideration of fees. PIAC would be very disappointed to see the introduction of late fees by Sydney Water, and does not consider that the proposed exclusion of customers on payment plans is broad enough to mitigate the impact on low income households. Further, if late payment fees are introduced then the exceptions that apply to particular energy customers should similarly apply to water customers too.

Recommendation 9

PIAC recommends that the Sydney Water customer contract not be changed to allow for future charging of late payment fees.

2.7 PIAC's response to IPART's questions on other areas for consideration

37 What are the benefits of including a licence obligation requiring Sydney Water to maintain a Memorandum of Understanding with NSW Health?

38 Should the Memorandum of understanding requirements with the NSW Office of Water and the Environment Protection Authority be removed from the operating licence?

PIAC strongly supports the existing requirements that Sydney Water prepare Memorandum of understanding (MoU) with the NSW Office of Water (NOW), NSW Health and the Environment Protection Authority. Sydney Water is required to work closely with each organisation to meet its legislative requirements and MoUs are effective means of articulating such common purposes and assisting each organisation to fulfil their obligations.

PIAC supports Sydney Water's suggestions that the obligations be redrafted to include a 'best endeavours' element and that the purpose of the MoU with the EPA be changed to "to establish and maintain an open and cooperative relationship between the parties, at all levels, to achieve the objectives of both Sydney Water and the EPA, especially in regards to the principles of ecologically sustainable development, preventing environmental degradation, and minimising human health risks."

2.8 PIAC's response to Sydney Water's proposed stormwater amendment

Sydney Water seeking amendment to clarify that it can construct new stormwater assets and amplify existing assets where required. PIAC supports Sydney Water's proposed amendment in regards to constructing new stormwater assets:

Sydney Water may also provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable stormwater drainage systems including increasing the capacity of the stormwater drainage system included in the business undertaking transferred under Part 3 from the Water Board to the Corporation as at the date of the transfer of the business undertaking.⁸

⁸ Ibid 102.