

Submission to IPART's Sydney Water Operating Licence Review 23-24: Draft Licence & Discussion Paper

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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1. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal's (IPART) Sydney Water Operating Licence Review 2023-24 Discussion Paper ('the Discussion Paper'). Sydney Water's Operating Licence sets the terms for Sydney Water's decisions over the next regulatory period and plays a crucial role in framing the needs and interests of the Sydney community and how Sydney Water should support that in ensuring equitable access to safe, reliable and sustainable water services.

PIAC broadly supports IPART's draft recommendations for the 2024-2028 Sydney Water Operating Licence. Our submission provides specific comment on the proposed draft reporting manual, water conservation, climate risk readiness and Sydney Water's obligations to customers.

2. Draft reporting manual

PIAC strongly supports the proposed new reporting requirements in the draft reporting manual. They reflect the baseline expectations of the community and will help raise the standard of performance reporting for Sydney Water as part of ongoing measures to create consistent standards and reporting for all NSW water consumers.

Reporting on customer protections including providing data on complaints, payment assistance, restrictions and family violence will provide greater transparency on how consumer outcomes are being delivered in the provision of an essential service. The proposed new requirements should be data that Sydney Water already collects and will better align performance reporting with that of other essential services including energy.

PIAC supports this information being published by Sydney Water in a manner that is public and easily accessible.

3. Water conservation, efficiency and long-term planning

PIAC broadly supports IPART's draft recommendations on water conservation, efficiency and long-term planning.

PIAC supports recommendation 7 including new operating licence conditions on the implementation of long-term planning. Sydney Water cooperating with other relevant stakeholders, engaging in reviews of relevant plans, and implementing actions provides a level of certainty for consumers and the community.

However, we reiterate our recommendation that the operating licence set efficiency and demand targets that can track and encourage stronger water conservation efforts on the part of Sydney Water. These could include targets for average demand per household and targets for system efficiencies that link to the stated goals of the Greater Sydney Water Strategy to save 38 GL/year of drinking water by 2030 and 49 GL/year by 2040.

Recommendation 1

That IPART use the Operating Licence to set efficiency and demand targets to track and encourage stronger and more consistent water conservation efforts in line with long-term planning assumptions.

PIAC supports recommendation 8 that Sydney Water utilise an economic approach to water conservation as a starting point, allowing it to also consider other social and environmental factors in deciding on water conservation actions. Water is an ecological and social resource with a 'value', not simply a product with a static 'cost' for which there is an 'economically efficient level of demand' to be met by Sydney Water.

Consumers consistently demonstrate an understanding of and preference for water to be valued outside of a strictly economic lens. We continue to caution against basing an economic method on the following disputable claim:

“Conservation activities beyond [the economic level of water conservation] are not useful for customers or taxpayers because the cost of achieving that extra conservation is higher than the benefit of water saved.”

While the specific 'value' of water is likely to be dynamic and should be determined through engagement with the community as part of Sydney Water's processes developing its pricing proposals, the Operating licence has an important role in explicitly recognising the other contributors that should inform this process and how Sydney Water should engage with the community.

4. Climate risk readiness

PIAC supports recommendations 13 and 14 to add new operating licence conditions on climate risk readiness to the Sydney Water Operating Licence. As the provider of an essential service that will be considerably impacted by ongoing climate change it is integral that climate risk readiness is prioritised by Sydney Water. We strongly support Sydney Water achieving a climate-risk maturity level of 'embedded' as defined in the NSW Government's Climate Risk Ready Guide. Achieving this level of climate risk maturity recognises the essentiality of water and the level of risk that Sydney Water will be exposed to through changes to our climate.

PIAC reiterates our recommendation that IPART investigate and if necessary, seek legislative change to provide clarity on Sydney Water's role in the community as a provider of climate resilience and adaptation programs. There is a question to be answered as to whether Sydney Water is a public utility that provides community water services (a broad remit) or a business providing water (a narrow remit). This is a tension that we have identified in Sydney Water's active and proposed climate resilience and adaptation programs, that has been corroborated by attending Sydney Water customer engagement sessions. This ambiguity of role is only further complicated by the fact Sydney Water shares responsibility for catchment and water source management with WaterNSW.

Climate resilience programs such as improving waterways and greening urban areas are important work but Sydney Water's current primary function in climate response is to conserve water assets. From their customer engagement sessions there was clear community support for the work Sydney Water does in improving waterways and greening urban areas (which can broadly be regarded as supporting community climate resilience) but significant confusion about why the government does not pay for this out of general revenue. As a regulated monopoly whose costs must be fully recovered from water users, there is a need to assess whether some functions undertaken by Sydney Water should be funded through Government or other programs. There was strong consumer sentiment that Sydney Water is well placed to do this work, but that it should not be fully recovered from consumers through Sydney Water bills.

Recommendation 2

That IPART recommend the Government initiate a process to provide clarity on Sydney Water's role in the community as a provider of climate resilience and adaptation programs. In particular, consider the shared roles of WaterNSW and Sydney Water and investigate opportunities for alternative funding contributions to resilience programs such as improving waterways and greening urban areas.

5. Sydney Water's obligations to its customers

PIAC broadly supports IPART's recommendations on Sydney Water's obligations to its customers.

5.1 Rebates

PIAC is aware that bills for Sydney Water consumers will likely rise substantially in the 2025-2030 pricing period. PIAC recommends including a mechanism in the operating licence to increase rebates proportionately in line with the price increases, alongside the current draft IPART recommendation 5 to increase rebates in line with inflation.

Recommendation 3

That IPART consider further measures in the operating licence to ensure rebates support varies over time to offer a consistent proportion of assistance through forthcoming price increases in the 2025-2030 pricing period.

5.2 Family Violence

Definition of family violence

PIAC supports the introduction of a definition of family violence but does not support aligning that definition with that in the *Family Law Act 1975* (Cth). This definition does not represent the updated understanding of family violence (such as those used in examples below), is obsolete and is not fit for purpose for the duration of the period of the operating licence.

As part of the rule determination for the *Protecting customers affected by family violence* rule change, the Australian Energy Market Commission (AEMC) determined that the definition of family violence be aligned with the definition of 'domestic abuse' utilised in the *Intervention Orders (Prevention of Abuse) Act 2009* SA. This definition was chosen by the AEMC because it is 'practicable to ensure that the wide range of energy customers who may experience family

violence receive protections.¹ They also stated that ‘The final rule is broadly drafted to give customers certainty that they are entitled to protections. In this respect, it relies on a definition of family violence that includes important relationships such as carers and Aboriginal and Torres Strait Islander kinship relationships.’² We consider this reasoning equally applicable to Sydney Waters Operating Licence.

PIAC recommends a broader definition of family violence than the definition contained in the *Family Law Act 1975* (Cth) and supports an approach in line with that taken in the AEMC rule change. Family violence does not only occur in intimate partner relationships and protections must also cover other familial relationships which are extremely prevalent in households across the Sydney community. For example:

- People with disabilities and chronic health conditions are over-represented as victim-survivors³ and the abuser may be a carer rather than an intimate partner.
- Community workers have informed PIAC that parents sometimes put bills in their young adult child’s name because the parent has a poor credit record.⁴ Although this is less likely to occur where the occupant is the owner, it could occur where the family are renters and the lease (and hence the responsibility for the water bill) is put in the name of the adult child.
- Kinship relationships may result in family violence manifesting in different ways in First Nations communities and Culturally and Linguistically Diverse communities.

These issues manifest differently to intimate partner relationships because victim-survivors cannot necessarily leave the relationship. In addition, due to relationship dynamics, and with many areas experiencing a tight housing market, moving out may not be practical option.

The definition contained in the Commonwealth legislation is not aligned with these contemporary understandings of the experience of domestic abuse and is much narrower than the definition used in the energy sector. Utilising this definition would not only unacceptably restrict the scope of the policies which result, but risks a confusing mismatch between essential services (given energy will utilise a more contemporary, wider definition) and would exclude a significant number of victim-survivors from receiving the protections and supports they need.

Recommendation 4

That Sydney Water be required to use a definition for family violence which is aligned with the definition of domestic abuse in the Intervention Orders (Prevention of Abuse) Act 2009 (SA). In any case, that the definition of family violence is fit-for-purpose and aligned with contemporary understanding and practice.

¹ Australian Energy Market Commission, *Draft Rule Determination, National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022*, ii.

² Ibid.

³ Australian Human Rights Commission, *Accumulating Poverty? Women’s Experiences of Inequality Over the Lifecycle: An Issues Paper Examining the Gender Gap in Retirement Savings*, September 2009.

⁴ For example, interview with a financial counsellor conducted on 9 February 2022.

Sydney Water's Family violence assistance policy

PIAC supports the draft recommendation that Sydney Water continue to be required to implement and maintain a Family violence assistance policy.

We strongly disagree with IPART's draft decision not to include further prescription on the basis that attempting to prescribe best practice could lead to excessive burden and ultimately costs for customers. We don't regard it as appropriate to limit measures to address family violence on the basis of a cost benefit assessment. Protections to mitigate against the impact of family violence on the community and provide appropriate support for victim-survivors are expectations and 'social goods' which should be regarded as fundamental costs of business. In any case there should be no/ little additional costs to Sydney Water given that the changes proposed would simply enshrine current practice. The benefits to victim-survivors, however, in having greater confidence to seek assistance from Sydney Water, would be significant.

Whilst Sydney Water may be implementing good practice above what is currently required at the moment, it cannot be assumed this will continue, or that intended outcomes are being fully delivered for all consumers. Existing practices are heavily dependent upon current staff and management priorities, and changes in staff, systems and management and/or culture over time can rapidly erode or overturn good practice. Enshrining more detailed protections in the operating licence will ensure that:

- Good practice continues for Sydney Water despite any changes to business systems, management, staffing or organisational culture.
- There are more consistent outcomes for victim-consumers with protections and supports being applied in a similar way regardless of the which staff member is managing the account (a common concern we hear in energy is that outcomes for people experiencing payment difficulty vary considerably not only between retailers, but also within retailers where different staff apply payment difficulty supports in different ways).
- If victim-survivors can clearly understand what supports and protections are available to them they may be more likely to disclose their situation to Sydney Water and get the supports and protections they need.
- If victim-survivors can clearly understand what supports and protections are available to them they can request these supports and protections if they are not offered (refer below to issues regarding 'secret knowledge' and self advocacy).

We recommend that Sydney Waters obligations be strengthened and added to ensure consistent good outcomes for victim-survivors, as detailed below.

- **The protection of private and confidential information.** As stated in the Discussion Paper, an obligation to protect private and confidential information is required to protect the privacy and safety of victim-survivors and help to give them confidence they can disclose their circumstances to Sydney Water. This obligation should help protect victim-survivors against stalking – or worse - instances where victim-survivors have re-located.
- **Access to payment assistance options.** This requirement is inadequate. It should be more specific, and require Sydney Water to develop and disclose a specific suite of payment options available to support victim-survivors; enable victim-survivors to have flexibility to miss

payments without penalties, including additional fees; and that debt not be sold to third party debt collectors.

Although not all victim-survivors will experience payment difficulty, many do, sometimes as part of intentional strategies by perpetrators. Many also face additional financial difficulties associated with leaving a relationship, sometimes having to do this in a hurry. All Sydney Water customers should have access to payment options, and it is our understanding that Sydney Water generally has good practice providing this response for people experiencing payment difficulty. However, 'access to payment plans' is a very unambitious minimum and does not focus on outcomes which is the review principle. This requirement alone does not provide sufficient protection against inappropriate collection of abusive debts, or harmful debt collection that compounds trauma and economic insecurity.

Sydney Water must expressly consider and raise with victim-survivors what payment options they have to assist them. Otherwise particular forms of debt assistance become a kind of 'secret knowledge' and rely on strong self-advocacy or professional advocacy by financial counsellors, who are already unable to meet current demand.⁵

Transparent debt assistance options are especially important in family violence circumstances, where victim-survivors are often dealing with multiple financial, legal, health and housing issues, of which water debts are only one. In addition, family violence often has a significant negative impact on confidence and mental health, making self-advocacy functionally impossible. In these circumstances, 'just paying the bill' and avoiding negotiations with essential services providers may be used to limit or manage psychological distress. Sydney Water should therefore proactively provide victim-survivors with accessible options that relieve the burden of self-advocacy and still allow people the agency to determine the best assistance for them.

Clear debt assistance options are also important for victim-survivors who are not experiencing financial hardship and present with good capacity to pay. Economic disparity within relationships is associated with a higher likelihood of intimate partner violence – ANROWS research⁶ shows that during 2021, women who were the main income earner were more likely than women who were not the main income earner to have experienced physical violence, sexual violence, and emotionally abusive, harassing and controlling behaviours (including economic abuse). The reasons for this are complex, but the subversion of gender norms, such as the male breadwinner/economic power model, may be a factor in the violence. Victim-survivors in these circumstances are entitled to know about and explore options for dealing with abusive debts and the financial impacts of violence.

For victim-survivors who can have multiple financial pressures and stress, we recommend the obligation of 'access to payment assistance options' be strengthened to include:

⁵ L Sylvan, *The Countervailing Power: Review of the coordination and funding for financial counselling services across Australia*, (2019).

⁶ Morgan, A., & Boxall, H. *Economic insecurity and intimate partner violence in Australia during the COVID-19 pandemic* (Research report, 02/2022). ANROWS, 11.

- Flexibility to miss some payments without voiding their payment plan. Some victim-survivors need to juggle competing priorities and expenses and some need to simply focus on their and their children's safety.
- Late fees and dishonour fees should not be applied to the accounts of victim-survivors. These simply make a tough financial time even harder. People do not choose to pay late and the stress and difficulties of experiencing family violence are a legitimate reason to pay late.
- The accounts of victim-survivors should not be able to be referred to external debt collectors. Selling a debt (even for closed accounts) forces a victim-survivor to re-explain their personal circumstances to an entirely new company which may or may not have a family violence policy in place. In the *Industry Guideline Preventing and responding to family and domestic violence*, the Australian Banking Association advises that after family violence is disclosed, debt should not be sold to a third-party debt collection agency and where it has been already sold to a collections agency that the bank work with the collections agency to ensure the best outcome for the victim-survivor, including re-purchasing the debt. A similar approach could be taken by Sydney Water.

As above, whilst Sydney Water may be already going 'above and beyond' to ensure good outcomes for victim-survivors, changes in management and/or culture over time can erode this good practice. For the benefit of victim-survivors, we recommend these protections be enshrined in the operating licence.

Recommendation 5

That the requirement for 'Access to payment assistance options' be more specific, and require Sydney Water to develop and disclose a specific suite of payment options available to support victim-survivors; enable victim-survivors to have flexibility to miss payments without penalties, including additional fees; and that debt not be sold to third party debt collectors.

- **Processes that minimise the reliance on individuals to disclose their family violence.** PIAC supports this requirement. Being required to disclose family violence can be difficult and traumatic as it requires victim survivors to:
 - have self-awareness that they are in a family violence situation and that they are the victim-survivor;
 - have the capacity to disclose this - disclosure is often traumatic;
 - have a safe opportunity to disclose this – disclosure can be dangerous for some victim-survivors; and
 - have some understanding and/or willingness that they could get assistance and be treated with dignity and understanding if they disclose their situation to Sydney Water.

This obligation requires Sydney Water frontline staff to be able to identify their customers and consumers experiencing family violence, a new requirement PIAC supports, as set out below.

- **Processes for referrals to specialist services.** Respectfully providing information about an external support service can lead to better outcomes and support for some people. This must be accompanied by quality training so that it is provided respectfully and appropriately, and

people do not feel obliged to contact the support agency. The Economic Abuse Reference Group has developed a guide with referral options to assist industry⁷ which we suggest Sydney Water follows.

To respond to the diversity in our community, contact details for specialist services should also be available for people who are from First Nations communities, CALD communities (particularly where a person has low English skills) and for people from the LGBTIQ+ community.

A clear and mandated referral pathway is also important to guard against potentially dangerous over-reach by staff, who may provide victim-survivors with inaccurate or harmful information about where and how to seek family violence support.

- **Identifying customers and consumers experiencing family violence.** PIAC supports this obligation, which is crucial to achieve the above outcome of having processes that minimise the reliance on individuals to disclose their family violence. However, without effective staff training, victim-survivors will likely need to use explicit language to access this assistance.
- **Customers and consumers to nominate their preferred method of communication and when they can be contacted.** PIAC supports this obligation. Victim-survivors are best placed to judge their safety needs and advise about safe communication methods, even if this means having no communication for a certain period of time.

PIAC recommends that the following also be required as part of Sydney Water's response to family violence:

- **Minimising the need for repeated disclosure by a victim-survivor.** Minimising the need for repeated disclosure is important to reduce a victim survivor's trauma and without it, can inhibit a victim-survivor seeking assistance. A requirement for having systems in place to avoid repeated disclosure was put in place by both the Victorian Essential Service Commission (ESC) in their response to family violence, as well as by the AEMC as part of the rule change *Protecting customers affected by family violence* and we recommend that this be enshrined as a requirement for Sydney Water's approach to family violence.

It is highly likely that Sydney Water already minimise repeated disclosure – the approach of victim-survivors being transferred to a dedicated Customer Care team member would indicate this.

As such including it as a requirement in the Operating Licence is unlikely to result in additional costs for Sydney Water, but will give victim-survivors assurance that they will not have to repeatedly relive their trauma, and that this will remain the case regardless of changes in management.

⁷ <https://eargorgau.files.wordpress.com/2017/03/referrals-good-practice-190917.pdf>

We note that Sydney Water is a member of Thriving Communities Partnership and involved in the 'One Stop One Story Hub' and support their work and inclusion in this initiative which works to avoid repeat disclosure.

Recommendation 6

Include a requirement that Sydney Water has in place systems to avoid repeat disclosure to protect victim-survivors from additional trauma.

- **Require family violence training.** If it does not already occur, training in family violence should occur for all Sydney Water staff and contractors, including senior managers, not only frontline service-providers. Otherwise, staff in other areas of the business, including short term contractors, can undermine consistent outcomes through a lack of understanding of vulnerability, and a lack of capacity to undertake their role in a way that consistently supports good outcomes for people requiring assistance.

All staff have capacity to impact outcomes for victim survivors, even where that impact may be indirect (for instance where staff designing IT systems and process may inadvertently build in practices which create or exacerbate risks for victim survivors. It is difficult to predict where understanding and competency in family violence will be a relevant consideration, so applying broad training requirements is a reasonable requirement.

All staff should also have the confidence that when they are discussing family violence issues or cases with anyone in the organisation – whether it is a manager, contractor, IT, or operator – they are sharing the same language and understanding. In addition, when all members of an organisation are required to have this competency, it will help drive organisational understanding and change.⁸

Training should result in competency in understanding family violence, and identifying, engaging and assisting victim-survivors as well as protecting their privacy and a broad understanding of safety which includes physical, economic and emotional. Without this competency, other requirements such as protecting personal information, providing payment assistance and identifying family violence without disclosure are undermined.

PIAC supports an outcome-based focus for staff competency which includes process indicators and measurable and enforceable outcomes, to avoid a narrow box ticking exercise focussed on process.

It is highly likely that Sydney Water already provide family violence training to their staff so there would be immaterial additional cost in including this requirement in the Operating Licence. However, its inclusion would make it clear that this standard should be maintained by successive managers.

⁸ Safe and Equal, *The family violence experts by experience framework implementation plan and guidelines for the Essential Services Commission and essential services providers* (2022).

Recommendation 7

Sydney Water be required to ensure that all staff have competency through training to understand family violence and their part in ensuring the physical, economic and emotional safety of their customers, consumers (and co-workers) who are victim-survivors.

- **Not allow requesting evidence of family violence.** The onus cannot be on the victim-survivor to prove the family violence they are experiencing. As a community, we are hearing consistent calls from victim-survivors that they must be believed, and contemporary practice is enshrining this. The AEMC agreed recently included a provision in the *Protecting customers affected by family violence* rule change that retailers cannot require documentary evidence of family violence as a precondition to applying the rules.⁹ We strongly support this approach being adopted by IPART in relevant decisions and determinations.

Allowing scope to ask for evidence is problematic because:

- There is often no evidence of abuse. Often perpetrators are meticulous about ensuring there is no evidence against them.
- Family violence could be in the form of verbal abuse, isolation from friends and family and/or controlling movements. It often involves patterns of behaviour for which there are few, if any consistent forms of 'evidence'.
- Abuse may be happening via an account a victim-survivor does not have access to.
- It can be difficult to get an intervention order (a common form of evidence) due to financial abuse on its own.
- Not everyone seeks out a community worker who could then provide a letter confirming family violence (again, another common form of evidence that is asked for in other industries).
- Victim-survivors may not have documents, particularly if they have left a situation quickly.
- If there is evidence and the victim-survivor has access to it, it is often very personal and is likely to cause distress to provide this, at the very least, or even put them in danger. It might be distressing for Sydney Water staff to deal with this evidence as well.

In the Findings Paper of the *Water Industry Standards Family Violence Provisions Review*, published in 2023, the ESC wrote that:

In the stakeholder workshop, consensus was that asking for evidence can cause distress to customers and staff and makes the customer feel they are not believed. Three businesses explicitly state in their policy that they do not require evidence from customers. Only one business refers to providing evidence in their family violence policy.¹⁰

The size of Sydney Water and its role as the provider in NSW's largest city should make it a leader for best practice response to family violence. At the very least it is reasonable that

⁹ Rule 76I of the National Energy Retail Rules.

¹⁰ At page 52.

Sydney Water aligns with those comparable Victorian water providers with an explicit policy of not requiring evidence.

Concerns regarding the potential for 'false claims' are without merit, and overstate a minor risk which is far outweighed by the potential harm impact of requiring evidence. Properly trained staff are well placed to identify any potential fraud and respond accordingly. Consistent with good regulatory practice, regulation should not be designed primarily to prevent the potential for a small group of people to 'benefit' inappropriately, particularly where this 'benefit' is marginal and does not come at the expense of others. Regulatory frameworks should instead designed to deliver the best outcomes for the largest number, and protect the vast majority of people in need of the most effective protection and support.

We suspect that Sydney Water is rarely in a position to ask for evidence of family violence as a pre-condition to providing support. However, explicitly making this a requirement in the Operating Licence enshrines a practice that is likely already being undertaken and consistently protects victim-survivors from this as a practice into the future, signalling best practice to other water providers in NSW. This requirement would impose no material cost to Sydney Water

Recommendation 8

That Sydney Water explicitly not be allowed to request documentary evidence of family violence as a precondition to applying their family violence policy.

- **Protection from restriction.** We note that Sydney Water's Family violence assistance policy states that:

We won't restrict your water supply or take legal action if we're helping you.

We'd like to work with you to keep the water on. We won't restrict your water supply or take legal action in any of these situations:

- We're helping you through our BillAssist® program or Payment Assistance Scheme (PAS).
- You've asked for a payment plan and are making payments.
- You've set up Centrepay payments through Centrelink and we're receiving payments
- You've lodged a complaint about your bill and we're looking into it or you've lodged one with the Energy & Water Ombudsman NSW.

As such, it is already practice that Sydney Water should not be restricting people who are victim-survivors. This is a good policy because restriction compounds the issues faced by victim-survivors by adding stress, humiliation and additional costs.¹¹

In addition to this policy, victim-survivors should not be restricted from their service even in circumstances where they may not currently be responding to Sydney Water communications or payment arrangements. If family violence has been disclosed or is determined, this is a legitimate consideration for a lack of communications and payments. Victim survivors in this position are 'busy surviving', keeping themselves and their children safe, managing mental health issues, having their phone or conversations monitored, managing legal issues, among

¹¹ PIAC, Close to the Edge – a Qualitative & Quantitative Study: Summary of key findings, 2018, 5.

other things. A restriction is a significant harm in itself, and a stressor that can drive an escalation in abuse by a perpetrator. This is a serious security issue for victim-survivors. Restricting victim-survivors significantly escalates the potential for serious harm.

In determining the *Protecting customers affected by family violence rule change*, the AEMC implemented protections from disconnection in Rule 111 of the *National Energy Retail Rules*:

- (2A) Where a customer is an affected customer [victim-survivor], a retailer must not arrange for de-energisation of the customer's premises under subrule (1) or (3) unless the retailer has taken into account:
- (a) the potential impact of de-energisation on the affected customer at that time; and
 - (b) whether other persons are jointly or severally responsible for the relevant non-payment or action referred to in subrule (1) or (3).

Whilst this should provide added support for victim-survivors, it falls short of delivering real protections them and still allows a punitive response to payment difficulty. As well as making the immediate situation worse for the victim survivor, this also sours the relationship between the retailer and the victim-survivor¹² which has a real impact on the likelihood of success in recovery from the circumstances. In water, as a monopoly provider, victim-survivors can't simply choose a new retailer if their existing relationship is problematic. This places a more substantial obligation on water providers to help victim-survivors and not resort to punitive measures like restriction. In addition, unlike in energy, Sydney Water will eventually be repaid the debt when the house is sold and thus a longer-term approach to payment difficulty and debt should be taken.

Recommendation 9

That Sydney Water should explicitly be prevented from restricting victim-survivors from their water service for non-payment.

- **Include a positive upfront message in the Family violence assistance policy.** PIAC recommends that Sydney Water include an upfront message in its Family violence assistance policy that sets a positive, welcoming tone for victim-survivors reading the policy. This could include wording that says that Sydney Water understands that water, as an essential service, can be used by perpetrators to inflict harm; That the nature of family violence can make staying on top of bills difficult; That people experiencing family violence will be believed and will not be required to explain their circumstances or provide evidence; and that Sydney Water considers the safety and welfare of people affected by family violence to be a priority.

Whilst this recommendation may not be appropriate for inclusion in the Operating Licence in detail, there is scope to ensure Sydney Water considers this approach and demonstrates it is providing a welcoming and 'safe place' for victim-survivors to 'land' when they are experiencing

¹² For example, the team working on the NSW Social Programs for Energy Code told PIAC that they estimate that about half of households who received rebates and are disconnected for non-payment switch to a new retailer, even though this means that they lose protections for the debt and can't access the crisis payment Energy Accounts Payment Assistance.

trauma.

- **Implement consistent and inclusive use of language.** The word 'customer' is used in Sydney Water's Family violence assistance policy, although later the policy states that the assistance also applies to tenants, not just owners. Community facing documents should use the term 'people' and avoid labels wherever possible to ensure that the policy is openly welcoming and clear on the range of people protected.

Recommendation 10

That where possible, all of Sydney Water's community facing documents, including those dealing with family violence, should use the term 'people' and avoid narrow labels.

Providing information on the family violence policy

PIAC supports the draft recommendations.

5.3 Tenants

PIAC recognises the efforts that have been made by IPART to consider outcomes for tenants in Sydney Water's provision of an essential service. We maintain our position that current arrangements for Sydney Water services are not fit-for-purpose and disadvantage the over 30% of NSW households who rent.

IPART has identified that legislative change is required to facilitate (and require) a direct relationship between tenants and Sydney Water. PIAC recommends that IPART actively support this legislative change be initiated as soon as practicably possible, and no later than the next Sydney Water Licence Review. PIAC would welcome the opportunity to work collaboratively with IPART, Sydney Water, the Tenants Union of NSW and other relevant stakeholders to progress this necessary reform to provide better outcomes for NSW consumers.

Recommendation 11

That IPART recommend that legislative reform is necessary and desirable to mandate a direct & separate usage billing and service relationship between tenants and Sydney Water.

PIAC supports IPART draft recommendation 23 to include a new condition requiring Sydney Water to produce a separate explanatory document specifically for consumers (tenants) that sets out their rights. PIAC is available to assist Sydney Water in designing this document to best achieve the intended outcomes of providing the document. In any case IPART should encourage this document to be developed in consultation with community stakeholders.

5.4 External dispute resolution scheme

PIAC supports retaining current operating licence requirements for both internal complaints and external dispute resolution. PIAC does not support any moves to allow alternative external dispute resolution. The NSW Energy and Water Ombudsman (EWON) is the established independent dispute resolution organisation with a proven track record across energy and water. The effectiveness and accessibility of independent dispute resolution depends on a clear understanding of where to go. This is materially undermined where multiple actors exist. IPART should not support any alternative external dispute resolution.

5.5 Consulting with customers

PIAC partially supports IPART's draft recommendation 25 to retain the condition requiring Sydney Water to maintain and consult with its customer council. We disagree with the removal of prescription on how this engagement should operate.

PIAC supports Sydney Water's operating licence explicitly including requirements for Sydney Water to retain enduring forms of structured community and stakeholder engagement. There is scope for the operating licence to further prescribe key aspects of this.

Sydney Water has elected to maintain a single body (its Customer and Community Reference Group or CCRG) to fulfil a number of different functions relating to its current licence and revenue determinations, as well as its ongoing community stakeholder engagement. PIAC considers that combining these functions is not a best practice approach and that retaining two separate (if potentially overlapping) groups to fulfil these functions is more effective and sustainable in the longer-term.

PIAC highlight the approach taken by Hunter Water (as well as NSW electricity and Gas distribution businesses) as examples of better practice which IPART could specify in the operating licence for Sydney Water. These approaches retain an ongoing, widely representative, community and stakeholder reference or advisory council (such as that stipulated in the existing licence and previously run by Sydney Water). A separate independent, expert or otherwise specifically constituted body to advise on, shape, interrogate and oversee processes related to the development of a revenue proposal (particularly the direct community engagement program) can then be initiated. PIAC considers this a best practice approach because it:

- Best facilitates the ongoing community and stakeholder advice body to be widely representative of all key elements and perspectives within the community. It does this by focusing on representation and setting a relatively 'low bar' for effective involvement and contribution by members. This ensures community groups, community representatives and other 'special interests' can be involved even where water services may be a relatively marginal priority for them, or where their own resource limitations mean deep engagement is not feasible.
- Ensures the role of advising on, shaping, interrogating and overseeing the licence and revenue determination process (and the direct community engagement which must inform it) can be undertaken by people with the expertise, resources and time to most effectively fulfil it.
- Allows scope crossover (and interaction) between these groups, without compromising the function of either, or limiting the engagement of groups with either (for example by setting the requirement for involvement too high for some groups to participate).

While the approach currently taken by Sydney Water is valid and has been embraced in good faith by Sydney Water, PIAC considers separate roles for ongoing community representation and advice, and independent oversight of engagement, to be best practice and a more enduring and effective approach.

IPART can (and should) prescribe that stakeholder engagement and direct community engagement are part of an effective community-centric approach to business decision-making and reflect this in Sydney Water's licence. Similarly, PIAC recommends the operating licence include further prescription that Sydney Water must:

- Retain an ongoing community representative advisory group (as has been previously stipulated in the operating licence), focusing on ensuring the widest representation of community and stakeholder perspectives and experiences.
- Ensure the timely initiation of an independent or expert advisory group to inform, shape, interrogate and oversee processes related to the review of the operating licence and the development of revenue proposals. This body should have a primary focus on ensuring engagement with customers and the community is shaping business decisions and that business decisions can clearly demonstrate they are shaped by and promote the interests and preferences of the community. The expertise of this group and the time and resource commitments involved should be commensurate with the task of input and oversight of Sydney Waters community engagement and revenue proposal development process. While this group may draw on members of other community advisory groups maintained by Sydney Water, it should be regarded as a separate and independent entity.
- Undertake direct community engagement informed and overseen by an independent or expert stakeholder advisory group. This engagement should be undertaken in line with best practice guidelines for good engagement and be capable of meaningfully shaping Sydney Water decision-making.

While we understand IPART's preference to stipulate the minimum requirements, there is greater scope to define what is currently regarded as the minimum. For instance, stipulations for engagement to be 'relevant, representative, proportionate, objective, clearly communicated and accurate' do not necessarily represent the current state of 'minimum requirements' for good engagement. IPART could provide updated criteria reflecting current best practice for consumer and community engagement, for example requiring a substantial deliberative element of engagement, and requiring engagement to be focussed on areas where the community can have a meaningful impact.