



29 February 2024

Ms Carmel Donnelly
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Ms Donnelly

2023-24 Review of the Sydney Water Operating Licence

Thank you for the opportunity to comment on IPART's review of the Sydney Water Operating Licence – Discussion Paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers, including Sydney Water. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this review.

If you would like to discuss this matter further, please contact Bryce Purches, Senior Policy & Systemic Issues Officer, on [REDACTED]

Yours sincerely

[REDACTED]
Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Sydney Water Operating Licence – Discussion Paper

The rights of tenants

EWON strongly supports IPART's draft recommendation to retain the current licence conditions that extend protections under the customer contract to tenants. This is critical as tenants are not direct parties to the Customer Contract; are referred to as consumers rather than Sydney Water customers and receive their water usage charges from their landlord.

As a result, they do not receive information about free, fair advice and independent dispute resolution on their bills and have limited visibility of the options available to them to assist their management of water usage and costs.

Research indicates that one in seven tenants will not complain, or request a repair, out of fear of adverse consequences including eviction¹. Therefore, a tenant with a highwater bill, affordability issue, or a concealed leak, is unlikely to complain to their landlord, their water provider, or EWON contributing to a cost-of-living divide between tenants and homeowners.

We strongly support IPART's recommendation to include a new condition requiring Sydney Water to produce a separate explanatory document specifically for tenants which sets out their rights. This is a step towards closing the gap between protections of property owners and tenants. EWON would welcome the opportunity to contribute to this work and also share the document with the aim of preventing the need for contact with EWON, therefore reducing complaints.

However, a formal review of the water sector focused on developing an equitable consumer protection framework for both property owners and tenants should seriously be considered by Government and water providers. EWON would welcome this recommendation by IPART.

Vulnerability

EWON supports IPART's recommendations to retain current Sydney Water licence conditions relating to:

- maintaining and fully implementing payment assistance options for property owners and tenants; and to
- publishing information about available payment assistance options.

In 2020, IPART changed the structure of water charges for Sydney Water² by:

- introducing a dynamic water use flexible pricing structure which varies water pricing with dam levels, meaning that consumers will pay a higher price for water usage if dam levels fall below 60%; and
- increasing the usage charge and reducing fixed service prices in all periods.

EWON acknowledges the benefits of this approach during drought, however we are concerned that it could decrease the affordability of water services for customers and tenants who cannot reduce water consumption. In its draft report IPART asked the NSW Government to consider restructuring the pensioner rebate to reduce the bill impacts of new prices for pensioners.³ IPART also noted that

¹ Choice, National Shelter & NATO, *Unsettled – Life in Australia's private rental market* – February 2017 p15.

² IPART Review of prices for Sydney Water from 1 July 2020 – Final Report June 2020

³ IPART Review of prices for Sydney Water from 1 July 2020 – Draft report, page 138

NSW Treasury, the Department of Planning, Industry and Environment, and Sydney Water stated that they will ensure pensioners are not made worse off by dynamic water usage prices.⁴

EWON strongly supports this shared position, and given increases in cost of living, we again note the need for a full review of rebates and concessions in the water sector. We would welcome the opportunity of participating in consultation work associated with rebate and concession alignment with changing water pricing.

Reporting and published information about BillAssist and PAS vouchers

We welcome IPART's proposal to include new reporting obligations in the Reporting Manual requiring Sydney Water to report on the number of complaints received each financial year, as well as the number of customers impacted by family violence; customers that have had supply restricted as a consequence of non-payment; and customers who are on a payment assistance plan.

Transparency of information is critical to gain data and insight that would allow for meaningful contribution from stakeholders about gaps in consumer protections. EWON further supports:

- separate reporting of the issues that property owners (customers) raise, and tenants (consumers) raise. This would position Sydney Water and IPART to identify and address circumstances contributing to vulnerability for these two different sectors.
- collection of data about debt levels, average bills and the amount of interest/late fees charged to customers..
- the reporting of more granular information about the use of BillAssist and Payment Assistance Scheme (PAS) vouchers. This includes details such as such as length of time on the program, average debt levels and length of time on the program. It also includes information about funding and the parameters of assistance, such as clear guidance for how PAS is administered.

Family Violence policy

EWON supports IPART's recommendation to retain the current operating licence requirement for Sydney Water's family violence policy. We also support defining family violence within the operating licence however we recommend that IPART consider further broadening the scope of the definition of family violence.

IPART has recommended that family violence be defined in the operating licence to align with the definition in the *Family Law Act 1975 (Cth)*⁵ which defines family violence to be violent, threatening, or other behaviour by a person that coerces or controls a member of the person's family or causes the family member to be fearful.

Family violence can occur in any type of familial relationship including current or former partners (spousal or de-facto), siblings, grandparents or grandchildren, and close extended family. It also occurs in relationships that have a high level of trust and are often considered to be family like, such as between a person with a disability and their unrelated carer. In its 2022 rule change⁶ to the National Energy Consumer Framework the Australian Energy Market Commission (AEMC) mirrored the definition in the *South Australian Intervention Orders (Prevention of Abuse) Act 2009*⁷ which provides broad coverage of the types of relationships within which abuse may occur, including

⁴ Ibid n2

⁵ *Family Law Act 1975 (Cth)* s 4AB (1)

⁶ National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022

⁷ *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, s. 8(8).



where one person is a carer of another, or where the relationship is established under Aboriginal and Torres Strait Islander kinship rules.

We acknowledge that IPART has made the recommendation to only prescribe the minimum necessary protections and to not attempt to prescribe best practice to avoid excessive burden and costs to customers.⁸ However, to ensure that there is clear and transparent information available to customers, we recommend clarifying the coverage of the provision within the rules, or a non-exhaustive list of types of abuse, to be detailed within the family violence policy. The current definition does not provide protection to affected customers who experience abuse in a family like relationship.

The water sector is positioned to lead the provision of additional protections and assistance to this group by extending the definition of family violence.

External Dispute Resolution and the water sector

EWON supports IPART's draft recommendation requiring Sydney Water to be a member of EWON and to not include an option of an alternative water ombudsman scheme.

As outlined in our submission to the Sydney Water Operating Licence – Issues Paper, access to free, fair and independent external dispute resolution is critical and a key consumer protection for people accessing essential services.

All External Dispute Resolution (EDR) schemes for essential services should not be, as suggested by Sydney Water, designed with the specifications of the essential services provider that will be a member of that scheme. An independent EDR scheme needs to be designed having regard to the immediate and long-term interest of consumers and take into account Government, industry participants, and consumer groups input into its functions. It also needs to meet the Commonwealth Government Benchmarks for Industry-based Customer Dispute Resolution.

Further, regard should also be given to the:

- 2014 Productivity Commission Inquiry Report into Access to Justice⁹
- 2017 Commonwealth review of the financial system external dispute resolution and complaints framework ('the Ramsay review')¹⁰.

Both of these independent reviews provided strong guidance with respect to ombudsman schemes, including that:

- there should be very careful consideration about creating new Ombudsman services where they already exist; and that
- creating competition between ombudsman services is not in the best interests of consumers.

EWON was established in 1998, is recognised as the NSW Government approved EDR scheme in accordance with the Electricity Supply Act 1995 and the Water Industry Competition Act 2006.

⁸ Sydney Water Operating Licence Review 2023-24 Discussion Paper, p100

⁹ Productivity Commission, Access to Justice Arrangements, Inquiry Report, September 2014

¹⁰ Ramsay I, Abramson J, Kirkland A, Review of the financial system external dispute resolution and complaints framework, Final Report, The Treasury, April 2017



Further, it has been found, through independent reviews throughout its history to adhere with the Commonwealth Benchmarks for Industry-based Customer Dispute Resolution.

EWON is due to commission its next independent review in accordance with its Constitution later in 2024. This review will again be undertaken in consultation with key stakeholders including Sydney Water, IPART and the NSW government.

Enquiries

Enquiries about this submission should be directed to Bryce Purches, Senior Policy and Systemic Issues Officer, on [REDACTED].