

15 September 2023

Dear Ms Titus and review team,

Re: Sydney Water's Operating Licence Review 2023-24 and response to Issues Paper

Thank you for the opportunity to provide feedback on the Issues Paper regarding IPART's current review of Sydney Water's Operating Licence 2023 - 2024.

Our comments will be brief, focussed on questions posed in relation to Sydney Water's obligations to its customers and consumers, and in particular, how renters are impacted by the current billing arrangements.

The Issues Paper usefully makes clear the current billing arrangements for water. Landlords (the owners of a property) have a customer contract with Sydney Water and receive bills for service availability and usage. Landlords, through the *Residential Tenancies Act 2010 (RTA)*, can seek reimbursement from renters for water usage charges for a premises. A renter is only required to pay for *water usage charges* if these conditions are met:

- the premises are *separately metered*; and
- the premises contain *water efficiency measures*, which are legally prescribed; and
- the renter is given a *copy of the bill* (or other evidence) setting out the water usage charges; *and* given not less than 21 days to pay, and the request by the landlord is *within 3 months* of the issue of the bill by the water supply authority.

Current billing arrangements put renters, who make up 1 in 3 households in Sydney Water's service area, at a significant disadvantage. The impacts of billing via the landlord for usage charges are felt in a number of ways and we discuss these in greater detail below.

Risk of falling into 'arrears' where rent used by landlord to pay for water usage

A number of problems that can arise because of the current arrangement that renters pay landlords for water usage, rather than having a direct relationship to a water provider. Renters can discover, after the fact, that money they paid towards rent has been reallocated to pay for water usage charges. We are aware of instances where this occurred even where the renter had not yet received a bill from their landlord for the water usage. They may only become aware of the problem (and the water usage charges) for the first time when notified they have fallen into rent arrears.

The Residential Tenancies Act (s33) protects against a landlord or their agent from using rent to pay for another fee or charge (for example water). However, this doesn't always stop a landlord or their agent from doing so.

Renters in the private rental market are at such a significant disadvantage given the current profound power imbalance that exists between landlords and renters, that they don't push back or challenge the assessment of 'arrears'. They simply pay off the amount requested, especially as a notification of arrears is often accompanied with a warning that failure to pay for arrears immediately may put your tenancy at risk. This is particularly egregious where a renter has not been made aware of water usage charges (i.e. a bill has not been passed on to them), or where they still have time to pay the bill (i.e. 21 days have not passed since receiving the bill) as this remains as a black mark on their rent ledger. Where this frequently occurs it can limit the renters' future access to the protections available against eviction if they do fall into rent arrears.¹

Failure to pass on charges in a timely manner

Despite protections in the RTA, landlords or their agents may be slow to pass on water usage charges. They may hold on to bills and send through multiple bills at once (bills in bulk) to renters, providing very little time for a renter to make payment. While the RTA only requires renters to pay for water usage where a copy of the bill is provided, and where this is provided within 3 months of being issued by a provider this does not always stop landlords from seeking payment well after this.

Requiring renters pay bills for water charges with next rent payment

Landlords and their agents will sometimes demand payment with the next rent payment due, that is they do not always provide the 21 days to make payment set out in the RTA. Renters worry that if they do not pay as requested they may put their housing at risk. They worry they may be considered by their landlord as having fallen into arrears, or their landlord or agent may choose to end their tenancy because they are seen as a disruptive tenant. This is possible due to the ability to end a tenancy agreement for 'no grounds' or no reason during a periodic tenancy or at the end of a fixed term agreement (section 84 and 85 of the RTA).

Inadequate information provided regarding usage via mediated billing

Renters are not always provided with a copy of the bill that has been issued to the landlord by the water authority. Or they may only be provided with a partial or blacked out version of the bill. This means they do not always have all the information required as set out in the RTA. A landlord or agent may have fulfilled the requirements of the RTA, but renters are still at a disadvantage compared to other consumers. A partial version of the bill, or 'other evidence of cost of water used' may be provided, but the renter may not in these examples have access to information about previous billing cycles to compare their usage to previous usage (often an indicator for a consumer as to whether or not damage or some problem has arisen, i.e. a leak). They also may not have any hardship information or other useful information (e.g. tips for using water efficiently) that is provided to the customer (landlord) by the water authority passed through to them.

¹ Section 89(5) of the RTA allows the Tribunal to evict where a renter has 'frequently failed to pay', even where they have paid all charges or entered into a repayment plan to do so.

Failure to receive timely notification of outages

While renters will generally receive notification of planned outages via mail or letter box drop directly to the property, they are unlikely to receive notification about any unplanned outages or updates about when an unplanned outage might be resolved. The landlord as customer is notified, but this is very rarely passed on to the occupier (renter as consumer).

We are aware Sydney Water has been actively seeking to build connections with renters through community outreach efforts by collecting information about consumers to ensure timely notification is possible. However, many renters will not be connected in this way. A much more effective way to address this would be to establish a direct relationship with the consumer (household occupier).

Barriers to accessing hardship arrangements for renters (PAS)

Where a renter is in hardship there are no formal hardship provisions that can be accessed by renters within the RTA in relation to the charges payable to the landlord (to whom they owe the water usage charge amount) that mirror the current arrangements put in place by the Operating License for water authorities/providers.

We are aware the Operating License extends some protections to consumers, including renters. Sydney Water's Payment Assistance Scheme, for example, is available to renters subject to their eligibility. They can access up to \$150 credit for water usage. Sydney Water's information about the scheme suggests that PAS credit can be applied, and may be used to put an account in credit. This is essential, as landlords often will pay a bill immediately and then seek reimbursement. However, we have found in practice renters are told the PAS credit cannot be applied where a landlord has already paid the bill.

While we appreciate the efforts Sydney Water has made to ensure renters can access these protections there are some significant barriers in place to this. Renters are often loathe to disclose financial hardship to their landlord or agent, for fear this might put a spotlight on their tenancy and put them at risk. They will often allocate income to rent and then water bills first so as to avoid arrears, as well as any scrutiny or awareness of financial difficulties. A requirement of having to disclose financial hardship to their landlord or real estate can act as a barrier for a renter to accessing the PAS scheme, especially where they are required to ask their landlord to 'hold off' from paying their bill to ensure the PAS credit can be applied.

Lack of awareness of protections, and hardship arrangements

The lack of a direct relationship between the water authority and the consumer also means many renters are not aware of the consumer protections or hardship arrangements that are available to them through the Operating License. In our experience there is not widespread knowledge of the extended protections and rebates available, even among the tenant advocates who often provide advice and assistance to renters in relation to disputes including those over water charges.

We would like to see the development of direct usage billing and a service relationship between Sydney Water and renters. We believe this would reduce the inappropriate 'friction'

issues that arise when the landlord must seek 'reimbursement' for the water usage charges from the renter, issues that can put renters' housing at risk.

It would also more broadly lead to fairer and more direct and equal access to the service and protections provided by the water authority, including hardship arrangements and available rebates. We understand this may require some legislative reform of the Sydney Water Act, alongside changes to the Operating License to allow or create a direct relationship between the water authority and the occupier.

As the issues paper demonstrated, this has been achieved in Victoria, which provides a useful case study and demonstration of how direct billing to the occupier can be achieved, and with seeming little disruption to the service provision and operation of the water authority. We appreciate this may take some time to achieve, and would need to be implemented with significant customer education and consultation. We believe the outcome would be well worth it for the consumers (renters).

Recommendation: Required legislative reform, alongside changes to the Operating License be undertaken to allow a direct and separate usage billing and service relationship between renters and Sydney Water (and other water authorities) to be established.

Thank you again for the opportunity to provide this submission. If you have any questions about the issues raised or our recommendation, please do not hesitate to contact me via email or phone (details provided below).

Yours sincerely,

[Redacted signature block]

I acknowledge I am working on unceded Aboriginal Country, generally Gadigal or Bidjigal land.