

Sydney Water and Hunter Water price reviews – unregulated pricing agreements



14 June 2016

WHAT

We are introducing greater pricing flexibility by allowing large non-residential customers and their service provider (Sydney Water or Hunter Water) to enter into unregulated pricing agreements for water and wastewater services, provided both parties agree to do so.

The maximum prices set by IPART would continue to apply for large non-residential customers, unless they agree to enter a pricing agreement with their service provider.

We have identified some factors that should be considered by both parties prior to entering an unregulated pricing agreement (see next pages).

WHY

Pricing flexibility allows Sydney Water and Hunter Water to search for opportunities to uncover value for their customers by tailoring prices and potentially services to better meet their customers' preferences.

WHEN

Unregulated pricing agreements may be entered into at any time from 1 July 2016.

It is important to be aware that once an agreement is entered into, either party cannot opt back into regulated prices while

the agreement is in place (but can return to regulated prices after).

WHO FOR

We have limited the option to large non-residential customers.

For this purpose, large non-residential customers are defined as stand-alone non-residential customers that have annualised water consumption greater than 7.3 ML.

WHAT FOR

We have limited the scope of unregulated pricing agreements to water and wastewater services.

LEARN MORE

Our reports, stakeholder submissions, the transcript from the public hearing, and consultants' reports are available on our website (www.ipart.nsw.gov.au).

The Final Report and related documents for Sydney Water can be found [here](#).

The Final Report and related documents for Hunter Water can be found [here](#).

Potential benefits of unregulated pricing agreements

Unregulated pricing agreements are optional and rely on customers and their service providers making well-informed decisions that are in their own best interests. If either party does not wish to enter an agreement, regulated prices continue to apply.

We have limited this option to large non-residential customers at this stage because these large businesses are likely to have experience negotiating commercial agreements.

Large non-residential customers are defined as customers that:

- ▼ are standalone water or water and wastewater customers (ie, not customers that share a connection with other customers), and
- ▼ have annualised metered water consumption greater than 7.3 ML (ie, water consumption greater than 20 kL per day on average).

This definition covers a small portion of Sydney Water's and Hunter Water's non-residential customers, but applies to a large portion of non-residential water usage and wastewater volumes.

The rationale for unregulated pricing agreements is that if either Sydney Water or Hunter Water is able to negotiate an agreement with a large non-residential customer that makes both parties better off, the regulatory framework should not prevent these 'win-win' agreements from occurring. We consider this initiative could demonstrate the extent to which customers value pricing flexibility. We provide some examples of how large non-residential customers and their service provider could achieve 'win-wins' from unregulated pricing arrangements in the box below.

Examples of possible 'win-wins' from greater pricing flexibility

The following examples are designed to show some situations where it might be in both the customer's and their service provider's interests to enter into an unregulated pricing agreement.

- 1 A seasonal business that would prefer its water bill to better match its level of business activity through the year. This business might be willing to pay a premium for a lower fixed charge and a higher variable charge.
- 2 A business subject to large fluctuations in its water usage but relatively flat revenue may prefer more bill certainty. This business may be willing to pay a premium for a higher fixed charge and lower variable charge. Alternatively, this business might be willing to pay a smaller premium for a tiered usage charge to partially reduce its bill fluctuations.
- 3 A business may require a lower or higher level of service than is specified in the customer contract. This customer could negotiate with Sydney Water or Hunter Water (depending on its location) and agree on an alternative arrangement that is mutually beneficial.

Implementation of unregulated pricing agreements

If a large non-residential customer chooses to enter an unregulated pricing agreement with their respective service provider (ie, Sydney Water or Hunter Water), the customer would no longer be subject to our determined prices for the term of that agreement.

Customers and their service providers should carefully consider terms and conditions, in light of their own circumstances, before entering an unregulated pricing agreement.

We have identified some key features and implications of unregulated pricing agreements that should be considered by both parties before entering into an agreement:

- ▼ **The legislative framework does not allow for either party to opt back into regulated prices while the pricing agreement is in place.** For such a right to exist, it would have to be written into the pricing agreement or, alternatively, both parties would have to agree to terminate the pricing agreement.
- ▼ **We do not specify what terms are to be included in a pricing agreement.** The terms of a pricing agreement are negotiated and/or accepted by the customer. This includes the duration of a pricing agreement (ie, end date) and conditions for terminating and cancelling pricing agreements (eg, whether Sydney Water's or Hunter Water's consent is required to terminate a pricing agreement).
- ▼ **The terms of a pricing agreement apply.** If the pricing agreement contains terms that are inconsistent with any provisions contained in Sydney Water's or Hunter Water's customer contract, the provisions in the customer contract would cease to apply to the extent of the inconsistencies.
- ▼ **If an agreement extends beyond a regulatory period, this could have implications for the prices contained within the pricing agreement.**
 - 1 Prices contained in pricing agreements would be valid as long as the option to opt out of determined prices applies in future regulatory periods. If a future IPART Tribunal removes this option from a determination, it could mean that prices contained in unregulated pricing agreements are no longer valid. Specifically, where the pricing agreement price is higher than IPART's determined maximum price, the pricing agreement price would be unlawful to the extent that it involves Sydney Water or Hunter Water fixing a price above the determined maximum price.
 - 2 Where the pricing agreement price is lower than IPART's determined maximum price, the parties to the pricing agreement may disagree on which of those prices apply. For example, a party may claim that the pricing agreement price does not apply unless the NSW Treasurer's approval to fix the price below IPART's determined price is obtained (in accord with section 18(2) of the IPART Act).

We consider these risks could be mitigated, at least to some extent, by aligning the pricing agreement dates with Sydney Water's and Hunter Water's price determinations (the 2016 determination periods for Sydney Water and Hunter Water from 1 July 2016 to 30 June 2020).