



21 September 2023

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

Dear Carmel

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 – Issues 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 issues paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this rule change.

If you would like to discuss this matter further, please contact Bryce Purches, Senior Policy & Systemic Issues Officer, on (02) 9078 6901.

Yours sincerely

A handwritten signature in black ink that reads 'Janine Young'.

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

2023-24 Review of the Sydney Water Operating Licence

EWON supports the approach of IPART's review and its identifying principles and agree that the Operating Licence should aim to reflect customers' preferences and needs by adopting a more outcomes focused approach.

We therefore do not consider that the recent changes to the external dispute resolution requirements in the Hunter Water Operating Licence, or the same proposed changes to the Sydney Water Operating Licence, are in the long-term interest of consumers. We have provided more detail about this issue in our response to question 35.

29. i) Are the rebates in the current Customer Contract well targeted and set at the right levels?

During the 2019 IPART Review of the Sydney Water Operating Licence, Sydney Water proposed to undertake research to increase rebates in line with CPI adjustments. We have previously noted that this was a positive initiative and support the proposal from Sydney Water to increase rebates in line with inflation at the beginning of the next Licence period.

We acknowledge part of Sydney Water's proposal to keep rebates flat for the remainder of the licence period, however, note that in the current volatile economic environment, inflation should be closely monitored as recent significant increases have led to many customers being financially disadvantaged. EWON would welcome a mechanism to review or increase the rebates if inflation again increases significantly during the licence period.

29. ii) Should any of the provisions of the Customer Contract, other than those already specified in clause 6.3 of the Operating Licence, be extended to 'consumers' who are not parties to the contract (e.g. tenants or property occupiers that are not landowners)?

EWON supports the proposal of continuing to extend provisions of the Customer Contract to consumers, ie including tenants or property occupiers that are not landowners, in Sydney Water's Customer Contract.

EWON supports IPART's proposal to extend provisions of redress and claims for damages under Clause 7 of the Customer Contract. Seeking redress and damages under the customer contract is simpler and cheaper for consumers than pursuing the same under common law.

Not only would extending provisions to match Hunter Water licence provisions provide for consistency across water providers, it would also go a long way to ensuring all consumers in NSW are afforded similar consumer protections without having to face additional administrative burdens.

For transparency and provision of clear information to all customers, it is appropriate for the Customer Contract to also specify what protections apply to both customers and consumers.



29. iii) Do you support Sydney Water's proposed changes to the Customer Contract?

EWON acknowledges Sydney Water's proposal to amend the wording of the Customer Contract. Specifically Section 8 - *Responsibilities for maintenance* and Section 9 - *Entry onto a customer's property*.

Section 9.3 of Sydney Water's Customer Contract *Notice of access* states that where access is required urgently, Sydney Water is not required to provide notice to a customer before entering a property. Section 8 *Responsibilities for Maintenance* relates to ownership and responsibilities, where there is a mechanism for Sydney Water to complete repairs on private infrastructure, including options if a customer does not want Sydney Water to complete repairs. However, it does not make clear that Sydney Water has the ability to perform urgent repairs to a customer's private water infrastructure and the circumstances where this may occur. EWON would support further clarity within the customer contract around urgent works required past the point of connection.

30. Do you agree that the current Operating Licence requirements for maintaining, and implementing and advertising payment assistance options are the minimum necessary to protect customers experiencing payment difficulty?

EWON supports the retention of the requirement for Sydney Water to maintain, implement and advertise payment assistance options to help customers experiencing payment difficulty.

As noted in our response to question 31, EWON considers that the options available to tenants need to be more clearly outlined by Sydney Water, in its Customer Contract and on its website. EWON welcomes Sydney Water's proposal to provide information on its website that sets out what assistance is available to tenants.

31. Within the limitations of the current legislative framework, we seek your feedback on how protections could be improved for tenants who are responsible for paying water usage at a separately metered property through the Operating Licence or customer contract?

Payment assistance options

The issues paper states that Sydney Water must maintain and fully implement payment assistance options and actions for non-payment that includes a policy that assists customers and consumers experiencing payment difficulty to better manage their current and future bills.

Currently the Customer Contract allows tenants to seek deferral of at least four weeks for payment but does not allow the negotiation of a payment arrangement. This is a gap in consumer protections in the ability to access a suitable payment arrangement that takes into consideration capacity to pay and other vulnerabilities. By not having a direct relationship, tenants are only able to seek a deferral of payment and are left to negotiate a payment arrangement with a landlord or real estate agent with no oversight or consideration of their capacity to pay. This situation creates potential concerns regarding tenant residential security in the property.

If Sydney Water were to extend the option of a payment arrangement on an informal basis to tenants, it would allow tenants to negotiate a payment arrangement more suitable to their circumstances.

EWON would support a separate policy specifically targeted at consumers and the requirement for Sydney Water to deal with consumers in accordance with that document. We would welcome further consultation on this.

Further to this, in its submission Sydney Water has outlined a number of assistance options that are offered to consumers. However, these are not policies, therefore there is nothing that supports the implementation of these principles or ensures that they are administered uniformly. A policy that outlines consumer options would assist in providing more equitable protections for consumers and ensuring consumers are informed about available assistance.

EWON would also support additional requirements for Sydney Water to keep the information it publishes about payment assistance options up-to-date and to communicate any changes made. For consistency this could be in line with the timeframes required under the Hunter Water Operating Licence¹.

32. Does the current Operating Licence requirement for Sydney Water to implement a family violence policy offer adequate protection for vulnerable customers?

The Australian Energy Market Commission (AEMC) recently introduced a rule change to the National Energy Customer Framework aimed at protecting customers affected by family violence.

As a customer affected by family violence is likely to need support from both their energy and water providers, it would be beneficial for the family violence policies and the support requirements for energy and water to be appropriately aligned.

We would encourage IPART and Sydney Water to note these recent changes to the energy rules. For example, some features of the new rule that would benefit water customers include²:

- 1) Broadening the scope of the family violence policy family violence by adopting a broad definition. The AEMC rule change includes a definition of family violence which provides broad coverage of the types of relationships within which abuse may occur, including where one person is a carer of another, or where the relationship is established under Aboriginal and Torres Strait Islander kinship rules. The definition mirrors the definition in the South Australian *Intervention Orders (Prevention of Abuse) Act 2009*.³
- 2) Extending the application of the rule change to also support small business customers. Consumer protections should be consistent between consumer groups and while we acknowledge there may be challenges in its implementation, consideration of the risks to customers who have experienced family violence creates impetus for addressing associated challenges.
- 3) Requiring energy retailers not to provide, an affected customers information, to any other person without the affected customer's consent. We suggest that this provision of the Sydney Water family violence policy be aligned with the AEMC rule change to clearly state

¹ Hunter Water Operating Licence 2022-2027 – 27(3)

² National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022

³ *Intervention Orders (Prevention of Abuse) Act 2009* (SA), s. 8(8).



that Sydney Water will not provide any additional information of an affected customer to another party without consent from the affected customer.

The current Hunter Water Operating Licence 2022-2027 requires Hunter Water to provide information about its family violence policy free of charge on its website and at least annually with their bills via the same method chosen by the customer to receive their bill. EWON would support similar provisions being included to the Sydney Water Operating Licence.

34. Do you agree that the current Operating Licence requirements for external dispute resolution are the minimum necessary to protect customers?

External dispute resolution (EDR) is a key consumer protection for people accessing essential services.

For EDR to be effective, it must be free, fair, and independent.

We understand that IPART's proposal to allow Sydney Water the option of being a member of an alternative dispute resolution scheme that IPART approves, is made with the intention of aligning the requirements for EDR in the Sydney Water Operating Licence with recent changes to the Hunter Water Operating Licence.

In hindsight, we do not believe that the change made to the Hunter Water Operating Licence requirement for external dispute resolution was in the long-term interest of water consumers in NSW.

Our concerns are centred around:

- the importance of independence in EDR
- the potential detriment of competing EDR schemes, particularly in relation to independence
- Sydney Water's discussion of EDR costs.

To support our views, we have included a brief overview of our new funding model.

Independence

In 2017, the Commonwealth Treasury's review of the financial system external dispute resolution and complaints framework ('the Ramsay review') released its final report⁵. The purpose of the Ramsay review, conducted by an expert panel, was to assess the EDR framework for financial services consisting of (at the time) the Financial Ombudsman Service (FOS), Credit and Investments Ombudsman (CIO) and Superannuation Complaints Tribunal (SCT), against the Review's core principles of efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs.

The report found that factors critical to the success of ombudsman schemes are that, although they are industry-funded, they are independent of industry and governed by boards that consist of an independent chair and equal numbers of directors with consumer and industry backgrounds.

⁵ Ramsay I, Abramson J, Kirkland A, Review of the financial system external dispute resolution and complaints framework, Final Report, The Treasury, April 2017

That independence is critical.

EWON is committed to the accountability and transparency of our scheme. Our Constitution requires EWON to commission an independent review of our complaint handling service, and the operations of the office at least every five years, or more frequently if the Board so decides, in accordance with the Benchmarks for Industry Based Customer Dispute Resolution. The Benchmarks for Industry-based Customer Dispute Resolution and the Key Practices for Industry-based Customer Dispute Resolution are published by the Commonwealth Treasury and set the standard for how EDR schemes should operate⁶.

The final report for the most recent independent review of EWON, and the EWON board response, was published in October 2019⁷. EWON's members and key stakeholders, including the NSW Government and IPART, participated in this review. EWON's funding model has also recently been reviewed. All EWON's stakeholders (including IPART), and members, participated in this review. Details of the new EWON funding model are provided below.

Consumer detriment of competing schemes and impact on independence

The Ramsay review also found that allowing competition between schemes creates the risk that schemes compete in relation to benefits provided to financial firms, rather than on achieving better outcomes for consumers⁸. If the Operating Licence requirements for external dispute resolution are changed for both Sydney Water and Hunter Water, it opens the door to an environment where water licenced providers in NSW can put EDR services to tender, and schemes will have to compete for that function on cost. Such competition undermines the very strength of EDR schemes – independence.

This concern was echoed by the submission made to the Ramsay review by the Australian and New Zealand Ombudsman Association (ANZOA). The final report noted ANZOA's comment that:

'competition among ombudsman schemes runs counter to the principles of independence, accessibility, fairness, efficiency, effectiveness and accountability. ANZOA is of the view that poor performing financial firms may choose to join a scheme they believe is not as rigorous in its approach to complaints. In its submission, ANZOA argued that a framework consisting of multiple schemes could have negative impacts because:

- *it may lead to manipulation of dispute resolution services, differing standards and inconsistencies in decision making which could be adverse for both consumers and members; and;*
- *may dilute the value of the ombudsman scheme as a source of information and analysis to contribute to the ongoing improvement of an industry, to the detriment of consumers, financial firms and the wider community.'*¹⁰

⁶ <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution> & <https://treasury.gov.au/publication/key-practices-for-industry-based-customer-dispute-resolution>

⁷ McBurnie G & Williams J, [Energy and Water Ombudsman NSW Independent five-year review](#), Final Report, Queen Margaret University – Consumer Dispute Resolution Centre, 30 October 2019

⁸ Ramsay I, Abramson J, Kirkland A, Review of the financial system external dispute resolution and complaints framework, p9

¹⁰ Ibid, p112

The Australian Securities and Investments Commission took a very similar view in its submission to the Ramsay review, that it:

‘does not consider competition between EDR schemes enhances consumer outcomes. Dispute resolution is not a competitive market, and access to EDR does not drive consumer choice of financial product or service. The potential for firms to seek to switch to a lower cost scheme, on the basis that fees and costs are likely to be one of the most salient features of dispute resolution, is undesirable from a policy perspective and can inhibit innovation or efforts of schemes to extend beyond the minimum jurisdiction’¹¹

Sydney Water has written in its submission that the proposed change to EDR requirements would allow it to choose a more cost-effective membership if an alternative scheme met its specifications for an effective external dispute resolution provider. This statement fails to recognise the importance of EDR as a consumer protection, and why it is effective. Put simply, an EDR scheme for an essential service should not be designed around the specifications of the provider that pays to be a member. An effective EDR scheme should instead be designed for the long-term interest of consumers, with all stakeholders, such as the NSW Government, industry participants, and consumer groups, having an opportunity to have a say in how it functions.

EDR costs for Sydney Water and the recommendations contained in the Productivity Commission’s Access to Justice Report

In its submission, Sydney Water also noted that compared to electricity retailers, Sydney Water is a significant financial contributor for the relatively low number of complaints that are referred to EWON.

We do not consider this to be an appropriate comparison. Electricity complaints are more distinctly separated into retail and network complaints, as these services are provided by different members. Retail complaints focus on billing, affordability and customer service and make up the bulk of complaints EWON receives. Network complaints are focused on connections, supply and issues impacting on private property. While EWON receives fewer complaints about networks, the complexity of these matters, and the potential harm to consumers, in many cases is much higher.

Sydney Water is both a network provider and a retailer. This means the complaints EWON receives about it are most often, completely different to an energy retailer and more similar to those of energy networks. The resources EWON puts into the management of the complaint reflects the complexity of the issues and the potential impact on the customer. Comparing the complaint costs of Sydney Water to an energy retailer is therefore irrelevant.

In 2014, the Productivity Commission released its Inquiry Report into Access to justice arrangements (‘the Access to Justice Report’)¹². The Commission was asked to undertake an inquiry into Australia’s system of civil dispute resolution with a view to constraining costs and ‘promoting access to justice’. This included the role played by both government and industry Ombudsmen.

The Commission noted in its report that stand-alone complaint schemes are not always the most efficient or effective way to resolve complaints, particularly where they are very small in scale. The

¹¹ Ibid

¹² Productivity Commission, Access to Justice Arrangements, Inquiry Report, September 2014



Commission recommended that ‘Governments should consider whether certain high-cost, low-volume complaints services could be more efficiently and effectively incorporated into another body rather than as stand-alone services. Given that ombudsmen are not suited to every dispute type, governments should consider the factors that lend themselves to an ombudsman service prior to creating new schemes. Consideration should be given to subsuming new roles within existing ombudsmen rather than creating new bodies’¹³.

We also note that the EDR cost to Sydney Water also includes more than just the cost of a complaint. For example, EWON’s community engagement program is designed to promote our services and educate consumers, small business and community workers about energy and water issues. In addition to raising awareness about our complaint handling process, EWON’s community engagement reduces the volume of complaints by making customers aware of financial affordability programs and initiatives offered by our members.

These additional costs were acknowledged and supported in the Access to Justice Report – noting that a significant proportion of unmet legal need could be served by greater knowledge of, and access to, ombudsmen and complaints services. This could be achieved through better visibility, mandatory notification, improved referral processes.

EWON’s proposed alternative approach

EWON urges IPART to delay the proposed change to the EDR requirements of the Sydney Water Operating Licence.

EWON is due to commission an independent review of our complaint handling service in 2024, as required by our Constitution. This review could consider the issues concerning the EDR framework for water, involving again, EWON’s two licenced water providers, IPART and the NSW government as participants in this review.

If IPART decides to progress with the proposed changes to the EDR requirements in this review of the Sydney Water Operating Licence, EWON strongly recommends that the approval of any external dispute resolution scheme by IPART should only be provided if that scheme:

- has gone through the same approval process as required for the approval of schemes under the Electricity Supply Act 1995 and the Water Industry Competition Act 2006
- is approved by the Minister and published in the NSW Government Gazette
- is free to consumers
- provides an independent dispute resolution service
- meets the Commonwealth Benchmarks for Industry-based Customer Dispute Resolution.

Overview of EWON funding and membership

Since FY21, EWON has undertaken a major review of its funding model. After an extensive consultation process with external and internal stakeholders, including Sydney Water, and analytical modelling and testing against agreed principles, EWON has recently implemented a new funding model. It remains based on the user pays principle and is underpinned by:

- equity and fairness
- transparency and efficiency

¹³ Productivity Commission, Access to Justice Arrangements, Inquiry Report, Volume 1, September 2014, Recommendation 9.3, p50

- consistency and predictability
- simplicity and affordability.

Aligned with the user pays principle, 85% of EWON's total funding is from variable fees, allocated on a complaint category and volume basis.

Another key feature of the new model includes industry sector differentiation in fixed fees, to fairly apportion fixed fees across sectors based on their demand for EWON services. Annual fixed fees make up just 15% of EWON's total funding. The water sector represents 10% of the fixed proportion of our fees, scaled by customer numbers set in bandwidths. This results in a minimal cost per Sydney Water customer to ensure their access to free, fair and independent external dispute resolution¹⁴. We believe that it would be very challenging for the NSW Government or Sydney Water to establish an alternative that would meet the benchmarks, at a lower cost than this.

36. Do you agree that the current Operating Licence should only require Sydney Water to maintain a Customer Council (or Customer and Community Reference Group), to reflect the requirements of the Act, but should not include any additional prescription for the Customer Council?

EWON supports the retention of the clause for Sydney Water to maintain its Customer Council (now known as Customer and Community Reference Group). We also support the minor proposed amendments that Sydney Water should be required to:

- understand how its systems and processes can better support more effective, direct relationships with consumers including residential tenants
- obtain advice and perspectives on the Customer Contract
- obtain advice on such other key issues related to Sydney Water's planning and operations under the Operating Licence which impact on customers and the community in Sydney Water's Area of Operations.

This process will assist in a building of rapport and trust with Sydney Water customers and will provide valuable insight that will lead to better policy and customer focused initiatives.

For consistency across water providers, EWON would support the additional requirement for Sydney Water to develop and implement a procedure for consulting with its customers, as required in the 2022-2027 Hunter Water Operating Licence. EWON may be able to provide insight on issues that customers and consumers raise through our investigations and would be willing to consult with Sydney Water on the development of any procedures, should IPART make this a requirement.

46. Do you have any other issues or concerns you would like to raise relating to Sydney Water's Operating Licence?

Reporting and published information about BillAssist and PAS vouchers

EWON supports transparency of information to stakeholders and customers. Currently there is a lack of information available regarding water customers including debt levels, average bills, rates of restriction (including impending notices sent) and amount of interest/late fees charged to customers. There is a disparity between information available in the energy sector in comparison to

¹⁴ EWON can provide IPART with cost per customer for our fixed fees paid by Sydney Water or our electricity network members on request.

the water sector which, if addressed, would allow for meaningful contribution from stakeholders around gaps in consumer protections.

There is also a lack of transparent information available 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 a clear guidance for how PAS is administered.

Energy retailers are required to comply with the NSW Social Programs for Energy Code which sets out criteria for how rebates and vouchers for assistance should be applied¹⁵. There is also reported information on uptake that is key understanding the reach and efficacy of the assistance. EWON would support a similar transparent framework that sets out how rebates and PAS vouchers are applied to ensure that equal assistance is provided to vulnerable customers. This would also provide more information regarding the customer landscape and contribute to meaningful policy making.

External dispute resolution information on bills

In September 2023, the Australian Energy Regulators (AER) Better Bills Guideline will come into full effect¹⁶. The Guideline requires energy retailers to issue its bills in line with the Guideline and is aimed at providing clearer and more transparent information to customers. The AER considered the display of EDR information on a customer's information to be a Tier 1 piece of information, meaning that it must appear on the first page of a customer's bill.

This may also help to mitigate any impact on Sydney Water customers if the requirement for a summary of the Customer Contract to be provided to customers annually with their bill is removed from the Operating Licence.

EWON would support IPART exploring this as an option of information provided to customers as it would assist in the increased awareness for customers and improve consumer protections.

Enquiries

Enquiries about this submission should be directed to Bryce Purches, Senior Policy and Systemic Issues Officer, on (02) 9078 6901.

¹⁵ [The NSW Social Programs for Energy Code](#)

¹⁶ Australian Energy Regulator, [Better Bills Guideline](#), Version 2, 30 January 2023