



24 November 2022

Ms Katye Jackett
Manager, Policy and Regulatory Reform, Water Utilities
NSW Department of Planning and Environment
4 Parramatta Square, 12 Darcy Street
Parramatta NSW 2150

Via email: katye.jackett@planning.nsw.gov.au

Dear Ms Jackett

Consultation on the Water Industry Competition (General) Regulation 2022

Thank you for the opportunity to contribute to this consultation.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers, including members licenced under the Water Industry Competition (WIC) regulatory regime. 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 consultation.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

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

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Consultation on the Water Industry Competition (General) Regulation 2022

EWON supports the overall intent of the proposed regulation to:

- formalise, and in some cases improve, practices that are already business as usual for many licensees
- provide certainty for licensees and their customers about what is required of them
- align protections for customers of licensees with customers of public utilities where practicable.

Our comments focus on consumer protections, including answering two stakeholder questions about the deemed customer contract. We understand that the proposed regulation must also manage the potential financial and operational impact on smaller entities and avoid a regulatory environment that discourages innovation.

However, our comments are also informed by the changes brought in under the *Water Industry Competition Act 2021* to introduce a threshold of 30 or more small retailer customer premises for an entity to be subject to the licensing regime. If an entity will not be subject to the licensing regime unless it meets this new threshold, it is reasonable to expect those that are subject to the regime to accommodate appropriate and equitable consumer protections.

Last resort arrangements

EWON supports the requirement for robust contingency planning to strengthen last resort arrangements, particularly:

- requiring information in the contingency plan about how the Ombudsman and the Independent Pricing and Regulatory Tribunal (IPART) will be notified (Division 2, section 34)
- including Ombudsman contact details on the first bill after the transfer from a failed retailer to a last resort retailer (Division 2, section 34).

With the unprecedented number of energy sector last resort events in 2022, EWON was able to:

- provide support and education for customers about what a last resort event means for them in practical terms, such as helping them understand that the purpose of the last resort process is to ensure their continuous supply
- assist last resort providers in resolving complaints, particularly through referring a customer's complaint to their new provider at a senior level in the first instance.

Licence conditions and approvals

EWON supports the following licence conditions designed to formalise and clarify existing responsibilities and strengthen consumer protections:

- maintain, test and read meters (Schedule 2, section 1)
- use best endeavours to protect customers with critical health needs (Schedule 2, section 6)
- develop, implement, operate and review an asset management system or plan (Schedule 2, section 7)
- connect a water meter at each premise (Schedule 2, section 10)
- clear delineation of responsibilities between operators and retailers (Schedule 2, section 13 and others)
- provide complaint handling procedures to customers in specific ways (Schedule 2, section 14)
- develop and implement a family violence policy (Schedule 2, section 16).

Our comments below outline suggestions for the complaint handling procedures section and family violence policy section.



Complaint handling procedures – Schedule 2, section 14

EWON supports the change from a general requirement that a licensee keep its customers informed of complaints procedures to a set of specific minimum requirements. Specific requirements provide clear guidance for licensees and ensure customers are aware of the internal and external dispute resolution processes available to them.

The two minimum requirements in the proposed regulation are in line with requirements in the operating licences of Sydney Water¹, Hunter Water² and WaterNSW³, being to:

- publish complaints procedures on the licensee’s website
- provide information about complaints procedures at least annually to customers with bills.

Sydney Water and Hunter Water both have a third minimum requirement to provide complaints procedures in response to a request made through their general enquiry process or contact centre. EWON suggests including a similar third minimum requirement for all licensees. The benefits of this requirement include:

- support for customers with no, or limited, internet access
- increased likelihood that a customer will receive complaints procedure information at a time that it is directly relevant.

Family violence policy – Schedule 2, section 16

EWON strongly supports the requirement for licensees to develop and implement a family violence policy. There is growing recognition across all sectors that special protections are vital for people who are experiencing, or have experienced, this form of vulnerability. The Regulatory Impact Statement acknowledges the introduction of family violence protections in the operating licences of Sydney Water⁴ and Hunter Water⁵, as well as the energy Customer Service Code in Victoria⁶. The Australian Energy Market Commission (AEMC) has also recently made a final determination to bring in family violence protections for energy customers in the Australian Capital Territory, New South Wales, Queensland, South Australia and Tasmania.⁷

EWON suggests changes to the proposed regulation wording to:

- specify that the list of aspects that must be covered by the family violence policy are “at minimum”, in line with wording in the operating licences of Sydney Water and Hunter Water
- include requirements for notifying customers of updates to the family violence policy, in line with wording in the operating licence of Hunter Water.

This licence condition should be a high priority when the regulation is reviewed in the future, particularly if there are developments in leading practice and/or the operating licence family violence provisions for public utilities. Cross-sector understanding of the impact of family violence continues to evolve, and the new protections in the regulation should not become stagnant.

Deemed customer contract

EWON has strongly supported the introduction of a deemed customer contract since at least 2014/15 when participating in the discussions which developed an initial draft contract.

EWON understands that the deemed customer contract will be reviewed every five years when the regulation is reviewed, with the potential to be reviewed more frequently if critical issues arise. All

¹ Sydney Water Operating Licence 2019-2023, clauses 6.7 & 6.8, p19

² Hunter Water Operating Licence 2022-2027, clauses 30 & 31, p17-18

³ WaterNSW Operating Licence 2022-2024, clauses 6.9 & 6.10, p16-17

⁴ Sydney Water Operating Licence 2019-2023, clause 6.5, p18

⁵ Hunter Water Operating Licence 2022-2027, clause 28, p15

⁶ ESC Energy Retail Code changes to support family violence provisions for retailers – Final determination, 22 May 2019

⁷ AEMC National Energy Retail amendment (protecting customers affected by family violence) rule 2022 – Final determination, 15 September 2022



reasonable opportunities to comprehensively review the deemed customer contract should be utilised to avoid the potential emergence of consumer protection gaps. Reviews should include analysis of what modifications to the deemed customer contract have been requested by licensees and granted by IPART, as well as an evaluation of how consumer protections have changed and progressed in public utility customer contracts.

EWON's comments below outline suggestions for the following aspects of the draft contract:

- rebates, including answering the following stakeholder question:
 - Should the standard contract refer to specific dollar service level rebates, or tie such rebates to the prevailing price of water?
- water pressure, including answering the following stakeholder question:
 - Should the standard contract include a service level obligation for minimum water pressure? If so, should it include the same standard as Sydney Water (15 metres head of pressure)?
- critical health needs
- payment difficulties
- disconnection or restriction for non-payment
- meter faults and testing
- tenant protections
- external dispute resolution information.

Rebates – Part 3, clauses 8-13 and Part 5 clause 21

Stakeholder question: Should the standard contract refer to specific dollar service level rebates, or tie such rebates to the prevailing price of water?

EWON supports the introduction of rebates related to water quality and sewerage overflow service levels. We acknowledge the reasoning behind a phased approach to manage the financial impact on licensees, with the potential to bring in further rebates in the future in line with public utilities.

EWON understands that Sydney Water provides specific dollar service level rebates, whereas Hunter Water's approach ties rebates to the price of water. Hunter Water's approach may be more indicative of the direction in which leading practice is heading given its operating licence and customer contract were reviewed more recently in 2022, with Sydney Water's last reviewed in 2019 and due for next review in 2023.

Water pressure – Part 3, Clause 12

Stakeholder question: Should the standard contract include a service level obligation for minimum water pressure? If so, should it include the same standard as Sydney Water (15 metres head of pressure)?

EWON supports including a service level obligation for minimum water pressure. EWON previously provided a case study of 20 complaints from customers in an estate serviced by a licensee regarding low water pressure, demonstrating that this is an issue of concern for customers.⁸

The minimum standard should be at least 15 metres head of pressure as per Sydney Water⁹ or 20 metres head pressure as per Hunter Water¹⁰. The minimum water pressure service level should apply to individual customer meters rather than parent or boundary meters where relevant.

EWON also suggests the addition of an applicable rebate for failing to meet the minimum water pressure service level. This rebate could either be a flat dollar value as per Sydney Water's approach or expressed in kilolitres as per Hunter Water's approach, depending on which approach is decided for water quality and sewerage overflow rebates.

⁸ EWON submission – Draft Water Industry Competition Amendment Bill 2020 consultation, 28 August 2020, p3

⁹ Sydney Water Customer Contract 2019-2023, clause 7.2.3, p23

¹⁰ Hunter Water Customer Contract 2022-2027, clause 3.1.9, p7



The Regulatory Impact Statement notes that some schemes may be unable to commit to a service level for water pressure due to their small size and/or technical reasons such as topography. These schemes could utilise the variation option outlined in the Regulatory Impact Statement and apply for IPART's approval to modify the application of the deemed customer contract in relation to the water pressure service level and/or rebate requirement.

Other options to help manage the water pressure issue could include via:

- licence approval process, such as requiring an applicant to address how they will ensure adequate water pressure as part of the application
- asset management systems or plans, such as robust planning to minimise the risks of poor pressure during staged developments.

Critical health needs – Part 3, clause 14

The proposed deemed customer contract wording is not specific about the method or form of customer notice for critical health needs. EWON acknowledges that this is in line with the operating licences of Hunter Water and Sydney Water. Hunter Water's customer contract has similar general wording which does not specify how notice should be provided.¹¹ Sydney Water has slightly stricter requirements as a health provider must be the one to notify Sydney Water. However, the method or form of that notice is similarly not specified.¹²

EWON acknowledges that the general wording provides flexibility. For example, it allows a licensee to choose to minimise administrative burden on customers by requiring verbal notice only. However, there could be potential disparities in customer experiences across different licensees, for example if one retailer accepts verbal advice where another requires medical documentation. This section will benefit from future review of consumer outcomes and leading industry practice to assess whether more specific wording is required.

Payment difficulties – Part 7, clause 35

The section about payment difficulties is overall clearly written and similar to corresponding sections in the customer contracts of Sydney Water¹³ and Hunter Water¹⁴, including requirements for the licensee to:

- make all reasonable effort to assist a customer who advises they are experiencing payment difficulties
- consider the customer's reasonable needs and capacity to pay
- provide written information setting out the details of an arrangement
- not charge late fees or interest or take any action for non-payment while the customer complies with the payment arrangement
- deal with the customer's financial difficulty in a fair and reasonable way.

While these may already be business as usual for many licensees, complaints to EWON indicate that this is not always the case – see [Case Study 1](#).

To align the section more closely with the protections in the customer contracts of Sydney Water and Hunter Water, EWON recommends including:

- a requirement that the customer has the right to be treated sensitively on a case by case basis
- a requirement that the licensee provide advice on assistance options including financial counselling services, appropriate government concession programs and community agencies

¹¹ Ibid, clauses 3.1.7 & 3.1.8, p7

¹² Sydney Water Customer Contract 2019-2023, clause 3.1.5, p8

¹³ Ibid, clauses 5.1 & 5.2, p17-18

¹⁴ Hunter Water Customer Contract 2022-2027, clause 6.1, p15-16



- advice to the customer to contact the licensee immediately if they are unable to meet a scheduled payment.

The payment difficulties section demonstrates the need to ensure the deemed customer contract is reviewed over time to ensure it keeps pace with progress in the energy and water sectors. For example, the Australian Energy Regulator (AER) recently released its strategy for energy equity and inclusivity¹⁵, and has commenced holding stakeholder workshops to design ‘game changer’ solutions for improving consumer outcomes. Any key developments in the energy sector will have implications for leading practice in the water sector.

Disconnection or restriction for non-payment – Part 8, clause 39

The section about disconnection or restriction for non-payment is overall clearly written and similar to corresponding sections in the customer contracts of Sydney Water¹⁶ and Hunter Water¹⁷, including requirements for the licensee to:

- send an overdue notice and disconnection warning
- use best endeavours to make further contact in person or by phone
- give reasonable notice to the occupier of the property
- not reduce flow of water supply or sewerage service below that necessary for basic hygiene
- not disconnect or restrict if the licensee has been notified a customer with critical health needs lives in the property
- not disconnect or restrict after 3pm, or on a Friday, weekend or public holiday.

To align the section more closely with the protections in the customer contracts of Sydney Water and Hunter Water, EWON recommends including requirements to:

- not disconnect while a customer has an unresolved complaint with the licensee and/or EWON (see below for further discussion of this point)
- not disconnect if the customer has entered into, or is in the process of entering into, a payment arrangement and is complying with that arrangement
- not disconnect if the customer has notified the licensee that they have sought assistance from a community agency and that assistance is imminent
- include in the notice to the occupier of the property specific information about a tenant’s right to pay outstanding charges and deduct that amount from rent.

Meter faults and testing – Part 10, clause 50

EWON suggests including a specific percentage threshold or a reference to the relevant Australian Standard to define when a meter is determined to be over-recording. This would further improve clarity around what is expected of licensees and customers. Sydney Water’s customer contract currently specifies over three percent of the actual quantity passing through the meter¹⁸ and Hunter Water’s customer contract specifies over four percent.¹⁹

Tenant protections – various

EWON strongly supports the inclusion of the following protections for tenants:

- the right for a tenant to pay an overdue bill and deduct that amount from rent as per section 46AF of the *Water Industry Competition Act 2021* (Part 1, clause 2 and Part 8, clause 39)
- the requirement for the licensee to provide reasonable notice prior to disconnection or restriction to the occupier of a property (Part 8, clause 39)
- the applicability of critical health need requirements to occupiers (Part 3, clause 14)

¹⁵ AER Towards energy equity – a strategy for an inclusive energy market, 20 October 2022

¹⁶ Sydney Water Customer Contract 2019-2023, clauses 6.1, 6.2, 6.3 & 6.7, p19-21

¹⁷ Hunter Water Customer Contract 2022-2027, clauses 7.1 & 7.2, p16-18

¹⁸ Sydney Water Customer Contract 2019-2023, clause 10.3, p34

¹⁹ Hunter Water Customer Contract 2022-2027, clause 11.4, p29



- the requirement for owners to notify the licensee if their property is leased, if requested (Part 13, clause 58).

To align protections more closely with protections in the customer contracts of Sydney Water and Hunter Water, EWON suggests that the following sections of the deemed customer contract should also be applicable for tenants:

- payment difficulties
- customer complaint procedures (if a specific section is added as per our suggestion below)
- privacy
- service levels and rebates which impact the occupier of a property.

The current approach to indicating which parts of the contract are applicable to tenants is to include small print exceptions in Part 1, section 2 and Part 8, section 39. EWON recommends taking the much clearer approach in the customer contracts of Sydney Water and Hunter Water, being to:

- define a specific term for tenants in the Dictionary (Part 15, clause 5)
- in the section about who is covered by the contract, list by number the specific clauses in the contract which are applicable to that defined term for tenants (Part 1, section 2)
- include that defined term in each specific clause that applies to tenants, for example Hunter Water states 'customers and consumers' instead of just 'customers' where suitable.

External dispute resolution information – various

EWON supports the inclusion of:

- advice that a customer may refer to EWON about a complaint related to service levels (Part 5, clause 22)
- confirmation that bills will include information about a customer's right to contact EWON (Part 6, clause 28)
- advice that a customer may contact EWON about a billing dispute (Part 6, clause 34)
- advice that a customer will not be charged late fees or interest on a disputed amount while a dispute is with EWON (Part 6, clause 34)
- confirmation that a reminder notice will include information about a customer's right to contact EWON (Part 7, clause 37)
- confirmation that a disconnection warning will include information about a customer's right to contact EWON (Part 7, clause 38)
- advice that a customer may refer to EWON about a complaint related to right of entry (Part 11, clause 51).

Specificity of language

EWON notes that the language throughout the contract tends to be very specific about the reason a customer may contact EWON. For example, the information on a customer's bill must indicate that the customer may contact EWON specifically about a review of a decision of the retailer about an overdue amount or a payment arrangement. We understand that the phrase 'review of a decision' reflects language used in section 48 of the *Water Industry Competition Act 2021* and that the complaint type information is aimed at managing customer expectations effectively. However, it may have the unintended consequence of discouraging customers from contacting EWON unless they fit these specific categories of complaint type. EWON recommends making the language more general and less prescriptive.



External dispute resolution section

EWON suggests adding a section specifically about external dispute resolution to the deemed customer contract. This could be similar to sections in the customer contracts of Sydney Water²⁰ and Hunter Water²¹ and include:

- advice that a customer should attempt to resolve a complaint with the licensee before contacting EWON
- advice that EWON will work with the licensee and the customer to find a fair and reasonable outcome
- confirmation that EWON is a free service
- general and non-exhaustive information about the types of complaints that can be referred to EWON
- advice that customers can contact EWON for independent advice (not just complaints or disputes)
- advice about other potential avenues that may be available to customers in some circumstances such as the NSW Civil and Administrative Tribunal (NCAT) or legal recourse.

EWON particularly recommends including this separate section if EWON's recommendation to change the language is not adopted.

Protection from disconnection or restriction

EWON strongly recommends that Part 8, clause 39 covering disconnection and restriction include a requirement that a licensee not disconnect or restrict a customer's supply for non-payment while the customer has an unresolved complaint with the licensee and/or EWON. This would give customers of licensees the same protection as customers of public utilities, on-market energy customers²² and customers living in energy embedded networks.²³

Definitions of 'complaint' and 'dispute'

EWON suggests including definitions of 'complaint' and 'dispute' in the Dictionary (Part 15, clause 5). The meanings could be similar to those used in the customer contracts of Sydney Water²⁴ and Hunter Water²⁵ and in WaterNSW's operating licence.²⁶ These terms could then be used throughout the contract and replace the phrase 'review of a decision' where suitable.

Enquiries about this submission should be directed to Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

²⁰ Sydney Water Customer Contract 2019-2023, clause 12.4, p38

²¹ Hunter Water Customer Contract 2022-2027, clause 13.4, p34

²² National Energy Retail Rules, Rule 116(1)(b-c), p86

²³ AER Retail Exempt Selling Guideline – Version 6, Condition 10(1)(c), p41

²⁴ Sydney Water Customer Contract 2019-2023, clause 15.1, p41

²⁵ Hunter Water Customer Contract 2022-2027, clause 16.1, p37-38

²⁶ WaterNSW Operating Licence 2022-24, clause 8.1, p25



Case Studies

Case Study 1

A customer was seeking an affordable payment arrangement but felt the retailer was not reasonably taking into account her capacity to pay.

A customer received an invoice from a private water scheme for \$5,500 in July 2022. She contacted the scheme which advised that the amount was from an unpaid infrastructure fee from 2019. It had recently completed an audit and identified the unpaid debt. The customer was not disputing that she had to pay the fee but wanted to arrange a payment plan. The private water scheme advised she would have to pay a minimum of \$800 per month, which she was unable to afford while also paying for her ongoing water usage and other living expenses. She contacted EWON for assistance, advising that she was seeking a payment arrangement of \$200 per month for the debt.

EWON referred the matter to the private water scheme for resolution at a higher level, which the customer accepted knowing she could return to us if she was unhappy with the outcome. While members are not required to provide EWON with the outcome of these referrals, the private water scheme advised EWON it had now agreed to a payment plan of \$200 per month.