Energy & Water Ombudsman NSW
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28 August 2020

Chris Leffers
A/Manager Policy and Coordination
Metropolitan Water and Utilities
Department of Planning, Industry and Environment
4 Parramatta Square, 12 Darcy St,
Parramatta NSW 2150

Dear Chris

Draft Water Industry Competition Amendment Bill 2020.

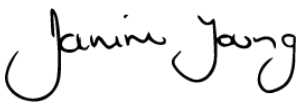
Thank you for the opportunity to comment on the Draft Water Industry Competition (WIC) Amendment Bill 2020 Consultation Paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers, including WIC members. EWON receives and responds to complaints from customers on billing, water pressure, rebates, and other issues. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to the issues in the consultation paper that align with complaints customers raise with us, or with our operations as they relate to this amendment bill.

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



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Draft WIC Amendment Bill 2020 Consultation 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 WIC members.

We have only responded to those issues in the consultation paper that align with complaints customers raise with us, or with our operations as they relate to this amendment bill.

Registered operators and retailers

Currently, the Act requires that infrastructure owners be regulated. In practise, the owners are often building managers who outsource the operational control of infrastructure or the billing function to specialists who perform those roles. EWON strongly supports the proposal to not regulate infrastructure owners, but rather to regulate those outsourced roles. The concept of linking every WIC scheme to a licensed operator and/or retailer and holding those entities responsible for that scheme's compliance with its approvals is a sound approach. This is a considerable improvement on the exemption regime that exists in energy. It will reduce the issues that arise between infrastructure owners, operators and retailers, and customers and should result in reduced complaints.

Definition of small customer for the purpose of regulation

EWON notes the proposal is to only regulate services with 30 or more small customers, defining small customers as 'residential, or a small business of 20 or less employees. EWON's Charter defines a small business for the purposes of establishing our jurisdiction to investigate a complaint as:

> *"a business that either has less than 20 full time equivalent employees or an aggregated annual turnover of less than $2 million"*

This broader definition is in recognition that a smaller business may not have the resources of a large company with respect to managing the relationship with its provider, and that smaller businesses experience the same sort of billing and credit complaints as a small retail customer. Even then, we are flexible and while we cannot investigate a complaint which does not fall within jurisdiction, we can provide advice and information, and refer those customers to their energy company's dispute resolution team. Further, with the energy company's agreement, we can work with both parties to negotiate an agreed outcome where the business customer could be considered 'small' while not technically meeting the definition.

We encourage you to consider giving the regulator similar flexibility in determining whether a business is a small one.

Thirty customer threshold below which infrastructure need not be regulated

While EWON understands the need to focus on retail and high-risk schemes, the threshold of 30 customers is concerning. The establishment of small-scale schemes with a limited customer base could lead to a lack of consumer protection. While we understand that current technology may make smaller schemes uneconomic, we have observed rapid technological advances in the energy industry that quickly outpace the consumer protection regime embodied in the National Energy Customer Framework. There is a real possibility that technological advances could see the proliferation of smaller water schemes that service individually, or collectively, growing numbers of consumers. Under this 30-customer definition these schemes would be excluded from requiring a licence and their customers would lose access to consumer protections which they currently have and potentially, have a greater need for under a WIC regime.

The embedded network framework in energy markets has a threshold of ten small customers, below which entities need not be regulated.

While this works to some degree, it still means that many customers miss out on consumer protections they would otherwise be entitled to.

It is becomingly increasingly common for a housing estate to offer energy as an embedded network and water as a WIC provider. Aligning the thresholds for regulation would achieve customer service consistency.

We propose that either a 'no threshold' approach be taken so that all customers receive equal access to consumer protection or for consistency, the threshold for regulation when a WIC provider services small customers be set at ten.

Customer Protections

A standard customer contract will be the basis for most consumer protections. EWON was involved in the discussions which developed this draft contract in 2014/2015. There have been significant advances in consumer protections since then, particularly in the context of financial vulnerability.

Accordingly, we look forward to being involved in discussions about development of a customer contract that is fit for purpose in the current environment when the regulations associated with the Act are consulted upon. There are however some key points that EWON wishes to raise in this submission.

Water head of pressure

The draft customer contract has the following clause related to water pressure:

> *"If the services provided by the scheme to your land include a supply of water, the licenced operator must publish on its website, in a manner conspicuous to customers, information about the water head of pressure for the scheme that may generally be expected, differentiating between drinking water and recycled water if applicable. However, the licensees are not required to ensure that the expectation is met and there is no service standard for water pressure."*

EWON received over 20 complaints from customers in an estate serviced by a WIC operator regarding low water pressure across a period of just a few weeks in summer 2017, as illustrated in Case Study 1 at the end of this submission.

Sydney Water and Hunter Water customers receive a clear commitment to a minimum standard for water pressure and a service payment is payable when these standards are not met.

Minimum standards should set and also be guaranteed for WIC customers with similar consequences if those water pressure minimum standards are not met.

Notification of price increases

EWON supports reducing the current requirement of six months' notice of price increases. The proposal is to remove a notice period from retailers who price match the public water authority while retaining a notification period for those who set their own pricing.

A three-month notice period for the latter would allow customers time to consider changing consumption patterns if there were affordability issues associated with a price increase.

WIC schemes and property owners

EWON fully supports strengthening the notification requirements for potential property owners through the conveyancing process. Where energy or water supply is a special arrangement, EWON often hears from customers that they only become aware of the special nature of their supply when they receive their first bill.

While it is important to ensure that a potential purchaser is made aware that the property is supplied by a WIC service, it is also important that there be a mechanism for notification of tenants and the Act should reflect this.

Last resort arrangements

The process for last resort arrangements is a required improvement to the WIC structure. Beginning with IPART declaring a scheme as 'essential infrastructure' the process then requires the designation of both an operator and retailer of last resort before operational approval is granted. The designated organisation must then prepare contingency plans which are paid for by the approved scheme.

The proposed amendments then specify four options that provide for the costs of the last resort provider if the arrangements are implemented. The funding options are:

- the failed licensee
- customers of the failed licensee
- an industry fund, or
- NSW consolidated funds.

The obvious entity to cover these costs is the failed licensee. However, solvency is likely to be the reason for the licensee failure and therefore any money recovered is likely to be insufficient.

An industry fund, with contributions built up on an annual basis by WIC operators, seems to be the best option. That is, entities which seek to obtain WIC licences in order to build a sustainable business would then be required to contribute to the risk mitigation costs of that regime. If NSW consolidated funds were required to cover the costs of WIC last resort actions, this ultimately places a cost on all NSW taxpayers, the majority of whom have no benefit from a WIC regime.

It is not appropriate that customers of the failed licensee be required to pay the costs of the last resort provider. These customers have no choice of provider, no ability to influence business decisions of that provider, and therefore, should not have to bear the costs of its failure.

Other issues

Three other issues not included in the consultation paper should be considered:

- bulk hot water services
- definitions of operational infrastructure, and
- dispute resolution.

Bulk hot water services

The current legislation specifically excludes the provision of hot water from WIC. Historically this service has been seen and billed as energy provision. Recently, many energy retailers, for commercial reasons, have switched to billing hot water services based on the volume of hot water delivered rather than energy consumed in the production of that hot water. This is despite the fact that energy retailers are not licenced to provide water services.

This has left consumers without the consumer protections linked to energy and, as they are specifically excluded from WIC legislation, outside of the protections available under the WIC Act.

Having no consumer protection coverage is not appropriate for an essential service.

Consumers in this situation are also excluded from Government rebates and financial assistance.

If hot water is again excluded from the WIC Act, it can be strongly argued that energy regulators should be responsible for billing consumers based on the energy used to heat the hot water produced by bulk hot water systems; the traditional approach taken by energy retailers.

Alternatively, the WIC Act should be amended to include the provision of hot water and the WIC operator be made responsible for billing based on hot water consumption and the provision of associated consumer protections.

It is vital that energy and water policy makers within government agree and implement a way forward towards appropriate regulation of hot water provision.

Metering infrastructure

Clause 5.4 of the draft customer contract lists the obligations that a customer has in relation to metering. The Act also references these customer obligations. The strong inference from these obligations is that the meter is a specific part of the infrastructure of the WIC operator.

EWON is aware of current situations where the ownership and responsibility for metering is confused. See Case Study 2 for details. This can arise for commercial arrangements between developers and WIC operators. Upon completion of a development, some responsibilities including maintenance and upgrading of meters can pass to a strata corporation. If there is a failure of the metering technology, it can lead to ongoing disputes between the strata corporation and the WIC operator. The customer can then be left in a situation where their consumption is not measured, and estimations based on total usage are used for billing individual customers. This is unsatisfactory, especially for customers who have undertaken measures to reduce their consumption.

To avoid this situation, the legislation should specify that appropriate metering and the responsibilities for that metering is an essential part of the operating infrastructure and should be the responsibility of the WIC operator.

Dispute resolution

As illustrated by Case Study 2, disputes will arise from time to time between parties involved in. Resolution to the problems identified in this case study could be sought by the operator through the court system. This could be costly for both parties and could easily lead to customer detriment through higher charges and/or reduced services.

The Act could provide a dispute resolution mechanism for redress between parties involved in delivering water infrastructure in order to, at least initially, prevent costs associated with the court system. This mechanism could be modelled on that which exists in the Raw Water Supply Agreement under which Water NSW supplies water to Sydney Water.[1] We recommend the inclusion of such a mechanism in the Act.

Enquiries about this submission should be directed to **Janine Young, Ombudsman on (02) 8218 5256** or **Rory Campbell, Manager Policy and Research, on (02) 8218 5266**.

[1] https://www.waternsw.com.au/__data/assets/pdf_file/0004/118687/SCA-and-SWC-Raw-Water-Supply-Agreement-2013.pdf

Attachment — Case Studies

Case Study 1 – Recycled water pressure in a WIC licensee's estate insufficient for reasonable use

Residents living within an estate often had issues with water pressure from its recycled water treatment plant. The residents understood that this was due to the plant not being able to supply enough pressure to meet the needs of all the residents. This was made apparent in one instance when a number of residents could not flush their toilets if they had their recycled water tap(s) running. One resident said that he had been contacted by the plant manager who asked if the residents could reduce their water usage, otherwise he would have to reduce the pressure available from the plant further.

Given all residents in the estate were required to connect for sewerage services and supply of recycled water with connection fees of $1,000 and water prices that were only slightly cheaper than Sydney Water, the residents reasonably expected to be able to get the pressure of water needed to water their gardens and use toilets at the same time.

This was especially concerning as at the time there were only approximately 600 homes in the estate, and the developer had been given approval to build up to 1,800 homes. All of these 1,800 homes were to be provided with water from the same recycled water plant. The residents were concerned that, given the plant could not cope with providing appropriate pressure to 600 homes, there was no way it would be able to cope with providing water to the extra homes unless it was significantly upgraded.

EWON contacted the provider who told us that the water infrastructure was in the process of being upgraded to cope with demand, including the proposed expansion of the estate.

Case Study 2 – Ownership of metering and telemetry infrastructure causes problems for operator and customers

In 2014, a water recycling plant was an integral part of a development. The developer installed metering and associated telemetry that was not designed either to Sydney Water or the infrastructure provider's specification. The ownership of, and responsibility for, the meters and telemetry ended up residing with the building management corporation (BMC).

Many of the meters were located within apartments and could not be manually read when the telemetry could not be relied on. As a result, many customers receive estimated bills. Moreover, even though it has the responsibility for billing, the operator is unable to remedy the situation due to not owning the meters. The BMC has taken the position that property owners must resolve their own telemetry system issues. The provider has advised EWON that to date, very few have done so as they are property investors who don't reside in the units and are therefore not responsible for paying water consumption. Hence, they have no financial incentive to pay for meter replacements.

The operator identified two options for remediation, neither of which will be satisfactory for customers, most of whom are tenants, who will continue to receive estimated bills, rather than bills based on actual consumption:

1. Bill individual properties for fixed service charges and bill BMC for water consumption. The BMC would then recover these costs from customers as it saw fit.
2. Bill individual properties for fixed service charges and apportion water consumption to customers by unit entitlement.

At the time of writing, the operator has not decided which approach it will take.