



public interest
ADVOCACY CENTRE

Submission to IPART Issues Paper

Hunter Water Operating Licence Review

15 November 2021

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

Affiliated Residential Park Residents Association NSW;
Anglicare;
Combined Pensioners and Superannuants Association of NSW;
Energy and Water Ombudsman NSW;
Ethnic Communities Council NSW;
Financial Counsellors Association of NSW;
NSW Council of Social Service;
Physical Disability Council of NSW;
St Vincent de Paul Society of NSW;
Salvation Army;
Tenants Union NSW; and
The Sydney Alliance.

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Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal's (IPART) Hunter Water Operating Licence Review: Issues Paper (the Paper) and broadly agrees with IPART's preliminary positions.

Hunter Water's Operating Licence is crucial to ensuring the business operates in the long-term interests of the consumers and the community it serves. IPART is currently conducting a comprehensive review of the regulation of water businesses and this process has identified a number of important priorities for more effective regulation. While it is not finalised, there is opportunity in this review to start incorporating some of the findings. PIAC highlights the need for a greater focus on the long-term interests of consumers and the community as a priority.

While the business is currently licenced for defined periods, the Operating Licence should recognise that Hunter Water's plans and investments extend over decades. Effective risk management and provision of sustainable and affordable services that meet community needs requires a long-term focus. A long-term focus should be incorporated into all appropriate aspects of the Hunter Water Licence. In the interim, the Objective of the Licence could be amended. PIAC has provided recommendations on this in response to the questions raised in the Paper.

In the remainder of this submission PIAC responds directly to selected questions raised in the Paper.

Performance standards, water conservation and water planning

1. Do you agree with retaining the existing drinking water and recycled water quality management conditions, with an explicit Licence condition to comply with any requirement specified by NSW Health?

PIAC strongly supports retaining the existing drinking water and recycled water quality management conditions, including an explicit condition to comply with any requirement specified by NSW Health.

4. Do you have any comments on retaining the existing system performance standards but revising the levels of service specified in the Licence? Should the level of service be set at an optimal level that reflects customers willingness to pay for higher levels of performance?

The current system performance standards do not provide sufficient direction to improve performance. The standards for water pressure, water continuity and dry weather overflow are provided as static, absolute numbers. IPART should consider amending these to set them as:

Proportions rather than absolute numbers. This approach would help provide an ongoing reference for performance that is consistent and able to account for increases in connections and encourage improved performance.

A band, from minimum acceptable up to 'optimum'. This would provide clear direction to Hunter Water on what is required to deliver on community needs, as well as a basis to engage with the community on where higher standards may be delivered through trade-offs against affordability. Minimum acceptable standards must be regarded as community 'needs' and not subject to trade-off, whereas performance up to the 'optimum' could involve trade-offs against other community priorities where this is clearly supported by the community through meaningful engagement.

6. Do you agree with retaining the existing requirements in the Licence for Hunter Water to undertake and report on water conservation (where it stores and transmits water, before treatment) as follows:

Retaining requirements to calculate the system yield?

PIAC strongly supports requirements to calculate the system yield. IPART should consider augmenting this to be a 'sustainable system yield' calculation that is updated to account for the impacts of climate change.

Focusing on maintaining and implementing the water conservation program?

PIAC strongly supports the Licence requiring Hunter Water to focus on maintaining and implementing the water conservation program. We highlight the recently released Draft Lower Hunter Water Security Plan (the Plan). Developed through extensive community and expert engagement, the Plan gave high priority to conservation programs and set out clear targets for improvements in sustainable system yield to be provided by conservation. IPART should consider amending this aspect of the Licence conditions to refer to the conservation targets and programs identified in the Plan.

Continuing to not require an economic approach to water conservation?

Considering the identified role of conservation in the Lower Hunter Water Security Plan and the issues identified by IPART, PIAC agrees it is not necessary to require an economic approach to water conservation in this aspect of Hunter Water's operations.

7. Should the licence include a condition to require Hunter Water to implement its economic approach to water conservation (when supplying treated water to customers)? We also propose including the following changes for greater consistency with the Sydney Water Operating Licence:

Requirements to maintain a water conservation work program and implement water conservation measures?

PIAC strongly supports the Licence requiring Hunter Water to focus on maintaining and implementing the water conservation program. We highlight the recently released Draft Lower Hunter Water Security Plan (the Plan). Developed through extensive community and expert engagement, this Plan gave high priority to conservation programs and set out clear targets for improvements in sustainable system yield to be provided by conservation. IPART should consider

amending this aspect of the Licence conditions to refer to the conservation targets and programs identified in the Plan.

A requirement for the water conservation work program/measures to be consistent with an appropriate economic method?

An assessment of the economic efficiency of conservation work should be required. However, increasingly, conservation is regarded as a priority aspect of planning to match long term system yield to demand requirements. The Lower Hunter Water Security Plan, responds to a strong community preference for conservation by setting a target for the contribution conservation should make to long term system yield that meets minimum system demand. PIAC supports this approach. Economic assessments should be part of the implementation of programs, acting as a final assessment to confirm that conservation options deliver value in meeting community needs.

Publishing requirements for the economic method used and the current level of water conservation?

Performance against targets for water conservation should be published. This should be a requirement in the Licence conditions.

Requirements for Hunter Water to periodically review its economic level of water conservation?

Hunter Water should be required to periodically assess its processes for determining the most effective and efficient means of implementing water conservation.

Requirements allowing the Minister to direct Hunter Water to revise the methodology at any time and for the Minister to approve the revised methodology?

PIAC does not consider it appropriate for the Minister to have discretion to direct Hunter Water to change its assessment of conservation efficiency or approve a changed approach. Assessment of the approach to conservation should be undertaken through a transparent, independent process subject to community and stakeholder input.

8. Should the Licence impose additional requirements on Hunter Water, or is there a more efficient way for Hunter Water to maintain a focus on water conservation?

PIAC reiterates our support for conservation to be regarded as an integral part of long-term water planning. IPART should support the setting of long-term sustainable system yield and minimum acceptable demand targets for Hunter Water. Licence requirements should ensure Hunter Water commits to these targets, periodically re-assesses them, and demonstrates how they are implemented efficiently, as a sustainable response to the community's needs.

Hunter Water's obligations to its customers

11. Regarding the Customer Contract

Are the rebates in the current customer contract well targeted and set at the right levels?

IPART should ensure the rebates in the current customer contract reflect the preferences of the community and require evidence they have been set and tested through meaningful engagement with the community. If this cannot be demonstrated, IPART should direct Hunter Water to undertake comprehensive engagement in the lead up to the next Operating Licence review. In the interim, the level, type and scope of rebates should be benchmarked against those available to Sydney Water customers.

Should any of the provisions in the Customer Contract, other than those already specified in clause 5.2.1 of the Licence, apply to ‘consumers’ who are not parties to the contract (eg. Tenants or property occupiers that are not landowners)?

PIAC supports the extension of the Customer Contract to recognise tenants and occupants who are not the owners of the property. The provisions already specified help extend important protections to these consumers who are indirect customers of Hunter Water. Under tenancy laws in NSW tenants are liable for usage charges where the property they live in meets basic minimum efficiency standards. They are therefore providing payment for a service delivered by Hunter Water. By any reasonable definition this makes them a customer of Hunter Water.

Responsibility for the health, continuity and quality of their water services rests with Hunter Water. It is their usage that Hunter Water is seeking to understand, account for and bill. Where the tenants experience financial difficulty or are on a pension, it is Hunter Water who is best placed to provide assistance to support their ongoing access to water. Water conservation programs, demand management and other key aspects of long-term planning will need to include and interact with tenants, who already make up nearly 35% of the population.

PIAC understands why, historically, a direct customer relationship has only existed with the property owner. However, with an increasing proportion of the population (including pensioners) living long term as tenants, there is a need to re-assess this. PIAC considers that Hunter Water should continue to develop more effective ways to adapt business systems and processes to provide appropriate service, protections and information to all residential customers, whether they are owner occupiers or private residential tenants.

IPART should direct Hunter Water to investigate (through appropriate consumer engagement) how its systems and processes can better support more effective, direct relationships with residential tenants. This process should involve the development of a plan for identifying and connecting with residential tenant consumers, communicating with them, and ensuring that they receive information, services and protections equal to other residential water consumers. It should also involve identifying costs and other external factors that impede better formal relationships with tenants.

12. Do you agree with our preliminary positions for maintaining or improving the Licence and reporting provisions for protecting customer rights, including:

Retaining the existing conditions requiring Hunter Water to make services available to properties, on request?

PIAC supports retaining the existing conditions.

Retaining the existing condition to maintain and implement policies and procedures for assisting customers facing payment difficulties?

PIAC supports retaining the existing conditions and recommend IPART consider including further guidance to Hunter Water regarding principles that should shape these policies and procedures. PIAC has worked with energy retailers to develop a best practice guide for responding to people experiencing payment difficulty¹ that could guide IPART. This need not prescribe any particular approach but will provide objectives and principles that the policies and procedures should include. For instance, that assistance should be provided as early as possible.

PIAC welcomes the opportunity to provide more detail to IPART on this matter, including discussing options for simple guidance IPART could include in this condition.

Including a new condition for Hunter Water to provide information to customers and consumers about payment assistance options on the date that Hunter Water first identifies that the customer is facing payment difficulty?

PIAC supports the intent of this condition but does not consider it the most effective approach. As outlined in the previous answer, a guideline with key principles to inform a payment difficulty policy and procedures would be more effective.

Including new condition to develop and implement a family violence policy?

PIAC supports the inclusion of a new condition requiring Hunter Water to develop, implement and maintain a family violence policy. PIAC understands that Hunter Water have already developed a robust system to address issues of family violence, informed by a strong domestic and family violence policy. IPART should ensure this policy is available in a range of information formats. Any online information should recognise the particular needs of domestic violence communications and be equipped with 'quick exit' mechanisms. IPART could ensure Hunter Water further consults with stakeholders and experts who provide support and services to people experiencing family violence to verify their policy and processes. Engagement with family violence stakeholders, including victim-survivors, should identify a range of measures to help Hunter Water meet the needs of people experiencing family violence (whilst reducing the harm a perpetrator can inflict) without requiring them to actively identify their situation or speak about their issues in detail.

Retaining the existing condition to maintain and implement an internal complaints handling procedure and communicate the procedure to customers?

¹ Australian Energy Council [Best Practice Resources](#)

PIAC supports retaining this condition. IPART should consider additional measures requiring Hunter Water to make information regarding these procedures available across a number of communications formats, including the bill.

Retaining the existing conditions to be a member of the Energy & Water Ombudsman of NSW (EWON) and publish information about referring customer complains to EWON?

PIAC supports retaining these conditions.

Updating the existing Licence conditions to improve how Hunter Water communicates its customer rights' protection policies?

PIAC supports updating existing conditions on communicating protection policies. The current specification of a 'pamphlet' limits the accessibility of the information provided, particularly to consumers who are vulnerable or disadvantaged. This condition should be amended to refer to a requirement to provide 'accessible information provided in both electronic and hard-copy formats', where 'pamphlet' is currently used.

14. In your view, should the Licence allow for other options for Hunter Water to effectively consult with a broad cross-section of customers about the systems and services it provides?

Hunter Water has scope to pursue a range of options in engaging with consumers and the community. PIAC supports the ongoing requirement for Hunter Water to maintain a Customer Advisory Group as an aspect of this. We note that the Customer Advisory Group is not the full extent of community engagement Hunter Water undertakes, but it plays a number of vital roles which should continue for the following reasons:

- It is a direct engagement tool to access the perspectives of key community representatives. These representatives maintain a level of expertise and perspective that is not available elsewhere in the community and may not be accessible directly from the community.
- It is a consultative tool to assist Hunter Water in shaping the range of other direct engagement activities, providing advice on how to reach community groups, how to structure engagement activities and other perspectives on key areas to engage on.
- It is a vehicle for oversight and verification of Hunter Water engagement and how it incorporates the perspectives it derives from that engagement. This function helps test business decisions, particularly in pricing proposals and ensure they reflect the engagement undertaken. This role is crucial for IPART to have confidence in community driven business decision-making.

IPART could consider expanding the requirement in the Licence. This expansion could direct Hunter Water to ensure the Customer Advisory Group is engaging in the functions listed above. IPART may also choose to add further direction that Hunter Water regard the Customer Advisory Group as a 'necessary but not sufficient' aspect of engagement with their community.

Commitment to quality processes and systems

15. Do you support our preliminary positions to update the Licence conditions requiring organisational system management by:

Retaining the existing Licence condition for maintaining and implementing an Asset Management System (AMS)?

PIAC strongly supports retaining this condition.

Removing the existing condition to report on the proposed changes to the AMS, and the requirement to submit the Strategic Asset Management Plan to IPART once in the Licence term?

PIAC does not support removing this condition at this time. The AMS is a key foundation for confidence in Hunter Water's business systems and its ability to dependably deliver the services the community requires. PIAC notes issues currently being experienced by the Central Coast Council that may stem from a lack of robust systems to manage and maintain assets adequately. Reduced regulatory burden is not an appropriate reason to reduce regular oversight of these systems considering the potential to increase risks in confidence in Hunter Water's management of its assets.

16. Do you consider that there is benefit in retaining requirements for an Environmental Management System or is there a more efficient way to minimise harm to the environment from Hunter Waters operations?

PIAC supports retaining a requirement for an Environmental Management System at this time. Hunter Water may propose an alternative mechanism for consideration. Any alternative should prioritise acceptable and sustainable environmental outcomes and provide a transparent and verifiable means of assessing Hunter Waters systems, decision making and performance in this area.

21. Do you support the following measures for protecting potential competitors when dealing with Hunter Water or is there a more efficient way of achieving the same outcome:

Retaining the Licence condition to make services available to WIC Act licensees?

PIAC supports retaining this condition.

Including a new Licence condition to negotiate with WIC Act Licensees and 'potential competitors' in good faith?

As below.

Retaining the Licence condition to cooperate with WIC Act licensees seeking to establish a code of conduct?

As below.

Including a new Licence condition to publish servicing information to WIC Act licensees and competitors?

PIAC supports the retention and addition of conditions regarding the provision of information and services to WIC Act licensees, and agrees with the requirements to negotiate and act in good faith (and according to any WIC Act code of conduct) in dealing with WIC Act licensees.

Including a new reporting requirement to report annually on matters, such as the number of agreements established with WIC Act licenses and the time taken to respond to information requests.

PIAC does not consider this a reasonable addition at this time. Hunter Water should be required to be open in providing information to WIC Act Licensees, and act in good faith in dealing with them. But it does not and should not have any Licenced requirement to make agreements. Provisions under this aspect of the Licence should allow for and enable competitors to arise if and where it is beneficial. These provisions should not assess Hunter Water according to its interactions with potential competitors or its success in negotiating with them.

Administration

22. Do you agree with our preliminary positions of:

Revising the Licence structure to be consistent with the Sydney Water Operating Licence?

Having a common licence structure for all large NSW public water utilities is a worthwhile intention. A consistent structure should seek to raise and apply best practice across businesses, rather than see a reduction in the standards required. PIAC notes that Sydney Water and Hunter Water do have some structural differences relating to the control of catchments and bulk water sources. Applying a consistent structure should not lower the standard or rigor of direction to Hunter Water in relation to management of catchments and water sources. PIAC is supportive of a revised and consistent Licence structure if this potential area of concern can be addressed.

Revising the Licence objectives to more closely reflect Hunter Water's principal objectives under the Act?

PIAC supports IPART's intent in modifying the Licence objectives to more closely align with those of the Act. We support more consistent alignment of objectives across all regulatory and legislative instruments that Hunter Water must respond to. However, this alignment should seek to ensure the most robust objectives supporting the long-term interests of the community are applied. PIAC recommends further changes to IPART's preliminary position on the Licence objectives, so that:

The Objectives of this Licences are to:

- a) Authorise and require Hunter Water, within its area of operations, to:
- i. Maintain supply of water that is healthy, resilient, reliable, efficient, equitable and sustainable.
 - ii. Provide sewerage services and drainage system systems that support community health and a sustainable environment.
 - iii. Treat, dispose of and utilise wastewater.
 - iv. Plan, invest and operate its systems in the long-term interests of its customers, consumers and the community.
- b) To set efficient and effective terms and conditions, including quality and performance standards.
- c) Require Hunter Water to provide services in a way that does not prevent or hinder competition

Retaining the existing pricing condition?

PIAC supports retaining this condition.

Continued engagement

PIAC welcomes the opportunity to meet with IPART and other stakeholders to discuss these issues in more depth.