



public interest
ADVOCACY CENTRE LTD

**Submission to Report on Secure and Sustainable
Urban Water Supply and Sewerage Services for
Non-Metropolitan NSW**

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The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Energy + Water Consumers' Advocacy Program (EWCAP)

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the Program is to develop policy and advocate in the interests of low income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the Program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW (CPSA);
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Institute of Sustainable Futures (ISF), University of Technology (UTS);
- Indigenous consumer representative; and
- Western Sydney Community Forum (WSCF).

Introduction

PIAC welcomes the opportunity to comment on the *Report of the Independent Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW*. The Report recommends the aggregation of local water utilities and proposes changes to their organisational structures and regulatory and pricing frameworks.

PIAC contends that water is a human right and essential service to which all people are entitled. As noted in the *Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW Discussion Paper*, smaller non-metropolitan water utilities under-perform against social, environmental and economic indicators¹. PIAC thus accepts the need for some reform of urban water supply and sewerage services but submits that these reforms must be in the best interest of water and sewerage customers and local communities. To this end, PIAC offers the following observations on local water utility aggregations, organisational structures, regulatory options, pricing and affordability.

Aggregations and Organisational Structures

The Report recommends that the NSW Government considers aggregating local water utilities down to 32 entities² and that they be structured as either binding alliances or council-owned regional water corporations or retain their existing organisational model³.

PIAC acknowledges that aggregations can enhance access to human and financial resources and in turn deliver improved social, economic, and environmental outcomes. Particularly given some small local water utilities experience difficulty complying with water and sewerage service guidelines⁴, PIAC concurs with the Report that there is cause to establish some larger water utilities.

Acknowledging this, PIAC maintains that local water utilities that are performing to an adequate standard should not be forced into new governance arrangements with other utilities. Aggregation should only be undertaken with the consent of local water utilities or following significant compliance failures. Where aggregation is deemed the best course of action, PIAC submits that the organisational structure must be selected with reference to the economic impact on customers.

Regardless of the organisational model adopted, PIAC objects to the notion that the provision of water and sewerage services should generate a dividend for local water utilities. PIAC is concerned that the profit motive generates incentive to sell more water when environmental considerations dictate that utilities should encourage a culture of water conservation. PIAC is also concerned that the primacy of the profit motive may adversely impact upon the affordability of local water and sewerage services.

¹ NSW Department of Water & Energy, *Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW – Discussion Paper* (2008) 7–8.

² The Hon Ian Armstrong and Dr Colin Gellatly, *Report of the Independent Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW* (2008) 36.

³ *Ibid* 60.

⁴ NSW Department of Water & Energy, above n 1, 7-8.

Regulatory Options

The Report concludes the current regulatory framework may not be as effective as it could be in driving performance and recommends that water utilities be required to implement relevant plans, guidelines and standards⁵.

PIAC commends the authors of the Report for acknowledging the shortcomings of the existing regulatory framework but, contrary to its proposed solution, submits that licencing delivers the optimum outcome for water and sewerage service customers.

As per the regulatory arrangements for Sydney Water and Hunter Water, operating licences set out the terms and conditions of customer contracts that oblige utilities to provide instalment plans, payment assistance scheme vouchers, and bill smoothing for customers experiencing difficulty paying their bills⁶. Licences also obligate water utilities to develop and implement codes of practice and procedure on debt and disconnection⁷, and to convene customer councils that advise water utilities and include representation of low-income households⁸. PIAC believes such provisions are in the best interests of water and sewerage service customers and consumers.

In addition, licences compel water utilities to develop internal dispute resolution processes and join the authorised industry complaints resolution scheme⁹. PIAC notes that the Report recommends that the Energy & Water Ombudsman (EWON) scheme be adopted by local water utilities where it can be demonstrated that there are net benefits in doing so¹⁰. PIAC posits that it is always in the interest of consumers to have access to a free and independent dispute resolution service and, regardless of the overarching regulatory framework adopted, urges the NSW Government to obligate all water utilities to join the authorised scheme.

PIAC also submits that the reporting obligations of operating licences better reflect the performance of water utilities against social indicators including billing complaints, affordability contacts, and the provision of instalment plans, rebates and vouchers¹¹. Furthermore, unlike the existing guidelines, licences make provision for public and independent operational audits of utilities¹², and reviews of both licences¹³ and customer contracts¹⁴.

As noted, operating licences already regulate the provision of water and sewerage services by Sydney Water and Hunter Water. A licence will also govern the provision of services to residents of Gosford and Wyong upon the commencement of the Central Coast Water Corporation. PIAC submits that it is inequitable if non-metropolitan residents of NSW are not afforded the same level of regulatory protection as residents of Sydney, the Hunter and Gosford and Wyong, and advocates that all utilities be required to hold a licence, irrespective of their location.

⁵ Armstrong and Gellatly, above n 2, 76.

⁶ Sydney Water, *Sydney Water Operating Licence* 63 <<http://www.sydneywater.com.au/Whoware/OperatingLicence>> at 20 March 2009.

⁷ Ibid 18.

⁸ Ibid 19.

⁹ Ibid 21.

¹⁰ Armstrong and Gellatly, above n 2, 5.

¹¹ Sydney Water, above n 6, 45-46.

¹² Ibid 32.

¹³ Ibid 3.

¹⁴ Ibid 18.

It is also recognised that, whether or not the recommended aggregation is adopted, some utilities may initially experience difficulty complying with licence or guideline obligations on account of lack of capacity. PIAC submits that in such cases the NSW Government should provide technical and financial support to assist water utilities to achieve the requisite standard of water and sewerage services.

Pricing and Affordability

The Report recommends that the regulation of pricing be strengthened to require utilities to establish prices in accordance with approved business plans and financial plans, and that prices be approved by an independent body such as Department of Water and Energy or IPART¹⁵.

Given the supply of water is a natural monopoly, PIAC contends that existing voluntary price regulation fails to adequately protect consumers. The fact that forty-four NSW water utilities have higher typical residential bills than ninety per cent of Australian urban water utilities¹⁶ indicates, amongst other things, that existing pricing regulations are inadequate. With this in mind, PIAC submits that voluntary price regulation be abolished in favour of a mandatory process with price approval determined by IPART.

The authors of the Report note that the price of water and sewerage must take into account the affordability of these services to the community¹⁷. Recognising that access to water is an essential service and human right, PIAC strongly endorses this statement. The capacity of customers to acquire an adequate quality and quantity of water and sewerage services must be a fundamental consideration of any price determination process.

Acknowledging that the price of water will be established with reference to factors additional to affordability, PIAC contends that water utilities must also deliver assistance to ensure residents experiencing disadvantage maintain economic access to an adequate supply of water.

A cornerstone of this assistance is the pensioner rebate. PIAC has several concerns with the existing rebate as prescribed by the Local Government Act. The fixed rebate amount of \$87 for water and a further \$87 for sewerage¹⁸ means that the utility of the rebate declines as the price of water increases, leaving pensioners relatively worse off. This fixed amount also means that pensioners in regional and rural NSW receive a markedly lower rebate than the \$473 rebate – calculated as 100 per cent of the water service charge and 83 per cent of the sewerage charge – available to pensioners who are customers of Sydney Water. PIAC is also concerned that some pensioners are denied access to the pensioner rebate on account of their residential status. Specifically, pensioners who are private tenants or caravan park residents are not able to access this support.

With these concerns in mind, PIAC endorses the Report recommendation to review the pensioner concession scheme¹⁹. PIAC urges the NSW Government to undertake a public review so that stakeholders have the opportunity to make submissions and recommendations to improve the pensioner rebate. PIAC further requests that this review be undertaken concurrent to the aggregation of water utilities so that pensioners can benefit from the new concession framework upon commencement of operations of the new water authorities.

Beyond the pensioner rebate, PIAC notes that customers of Sydney Water and, in some cases, Hunter Water, are eligible for a range of additional social programs to assist them to both reduce their water consumption and pay their water bills. This includes access to water Payment Assistance Scheme (PAS) vouchers when customers are experiencing financial hardship, No Interest Loan Scheme (NILS) to assist with the purchase water efficient

¹⁵ Armstrong and Gellatly, above n 2, 86.

¹⁶ Ibid 21.

¹⁷ Ibid 86.

¹⁸ Local Government Act 1993 (NSW) s 575.

¹⁹ Armstrong and Gellatly, above n 2, 75.

appliances like washing machines, Centrepay so that residents can elect to have a small amount of their Centrelink benefits automatically allocated to pay their water bills each fortnight, and Water Fix to install water saving devices that make kitchens and bathrooms more water efficient.

PIAC believes that all customers experiencing difficulty paying their bills should have access to such social supports, irrespective of the area in which they live. PIAC thus urges the NSW Government to regulate to require all water utilities to offer hardship programs that provide crisis support, debt management, referral to community services, and water efficiency initiatives to customers who identify themselves or are identified as experiencing hardship. PIAC also submits that the adequacy of these hardship programs should be approved by IPART. It is further recommended that water utilities be obliged to publicly report on their delivery of hardship programs and that IPART monitors and audits their performance against customer service indicators. Where utilities fail to provide adequate support they should in turn incur financial penalties.

Conclusion

PIAC acknowledges the need for reform of local water utilities but submits that changes must be in the best interests of non-metropolitan customers and communities. To this end, PIAC urges the NSW Government to aggregate water utilities only following significant compliance failures or where there is agreement from the local utilities. PIAC also submits that the profit motive be divorced from the provision of water and sewerage services. It is further suggested that water utilities be required to hold licences and that, in the transition to this new regulatory regime, the NSW Government assists utilities to realise their licence obligations. Finally, PIAC contends that affordability must be a key consideration of price determinations and be supported by an adequate state-wide pensioner rebate scheme and mandatory hardship programs.