



public interest
ADVOCACY CENTRE LTD

**A Rights Approach: Submission to the
Productivity Commission inquiry into
Australia's Urban Water Sector**

30 November 2010

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1. Introduction

1.1 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 Industry and Investment NSW 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.

1.2 Energy + Water Consumers' Advocacy Program

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);
- Western Sydney Community Forum (WSCF); and
- National Seniors.

2. The current inquiry

PIAC welcomes the opportunity to provide a submission to the Productivity Commission's inquiry into Australia's Urban Water Sector. The Inquiry aims to identify efficiency gains that can be made in Australian urban water and wastewater sectors while taking into consideration a range of factors including environmental, economic and social impacts of any proposed reforms.¹ PIAC has taken a human rights approach to provide answers to a selection of questions posed in the Productivity Commission's Issues Paper, *Australia's Urban Water Sector*.

From the outset, PIAC would like to highlight that the Human Rights (Parliamentary Scrutiny) Bill 2010 is currently before the Australian Senate. Should this bill pass in its current form, all legislation and regulatory amendments, and new regulations and legislation will have to be accompanied by a human rights statement of compatibility.² The statement of compatibility will recognise human rights as outlined in seven United Nations Human Rights Treaties to which Australia is a party.³ These treaties include the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *International Covenant on Civil and Political Rights (ICCPR)*.

3. Efficiency and other objectives

The Issues Paper poses the questions: What are the objectives that should guide reform of Australia's urban water sector? Should the objectives be the same across all urban water systems? PIAC submits that affordability and consumer protection are essential in guiding Australia's urban water sector and are relevant to all urban water systems.

3.1 Affordability

PIAC contends that everyone is entitled to a supply of water necessary to secure an adequate standard of living.

This reflects Australia's obligations to protect, promote and fulfil human rights as a State Party to international human rights treaties including the *ICESCR*.⁴ In particular, PIAC notes the right to water as a component of the 'right of everyone to an adequate standard of living' set out in Article 11 of *ICESCR*, and as a component of the 'right of everyone to the enjoyment of the highest attainable standard of ... health' set out in Article 12 of *ICESCR*.

¹ Productivity Commission, *Australia's Urban Water Sector: Terms of reference* (2010) <<http://www.pc.gov.au/projects/inquiry/urban-water/terms-of-reference>> at 1 November 2010.

² Explanatory Memorandum, Human Rights (Parliamentary Scrutiny) Bill 2010 (Cth) 4.

³ Ibid 3.

⁴ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ratified by Australia on 10 December 1975 (entered into force for Australia on 10 March 1976).

The treaty body for *ICESCR*, the United Nations Committee on Economic, Social and Cultural Rights, in its General Comment No 15 of 2002,⁵ observed:

1. ... The human right to water is indispensable for leading a life of human dignity. It is a prerequisite for the realization of other human rights ...

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

...

12.

(a) Availability. The water supply for each person must be sufficient and continuous for personal and domestic uses.⁶ These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. Some individuals and groups may also require additional water due to health, climate, and work conditions;

...

(c) Accessibility. Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) Physical accessibility ...

(ii) Economic accessibility: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) Non-discrimination: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

(iv) Information accessibility ...

In practical terms, this means that the Australian Government must ensure that all households are able to afford to purchase an appropriate quantity and quality of water.

Unfortunately, many NSW households experience difficulty paying their water bills and some have their water supply restricted due to their lack of capacity to pay. The National Performance Reports indicate that almost 5,000 customers of the two largest NSW water utilities, Sydney Water and Hunter Water, had their water flow restricted due to non-

⁵ Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, UNCESCR, General Comment No. 15, 29th sess, UN Doc E/C.12/2002/11 (2003).

⁶ 'Continuous' means that the regularity of the water supply is sufficient for personal and domestic uses.

payment in 2007–08.⁷ A recent Independent Pricing and Regulatory Tribunal (IPART) survey of residents of the Hunter and Central Coast regions of NSW revealed that 10 per cent had experienced difficulty paying their water bills over the previous three years.⁸

The price of water services is a key factor that determines whether households can afford to pay their bills and maintain access to this essential service. PIAC has previously recommended to the Department of Environment, Water, Heritage and the Arts (DEWHA) to include an additional water pricing principle that recognised water as an essential service and obliged price setters to ensure that no-one would be denied access to an adequate supply of water because of an inability to pay.⁹

Many households already face significant water price increases. For the period between 1 July 2008 and 30 June 2012, Sydney Water customers who consume 200-299 kilolitres of water per annum will experience cumulative price rises of 32.6 per cent percent.¹⁰ Residents of the Hunter region with the same consumption level have just experienced the first of four bill increases totalling 30.7 per cent over four years.¹¹ Recent price reviews for Gosford and Wyong determined that households will pay an extra 15.1 per cent and 20.7 per cent respectively.¹² When reviewing the price of water for residents of Broken Hill, IPART reported that Country Water has proposed transitional paths to achieve full-cost recovery over 16 years, beginning with bill increases of 10 to 52 per cent a year for typical residential customers over the first three years.¹³ PIAC is concerned that these and subsequent water price increases will undermine household access to a

⁷ National Water Commission, *National Performance Report 2006-2007 Urban Water Utilities* (2009) <<http://www.nwc.gov.au/resources/documents/0607-national-performance-report-urban-pub.pdf>> at 18 October 2010.

⁸ Independent Pricing and Regulatory Tribunal of New South Wales, *Review of prices water, sewerage, stormwater and other services for Hunter Water Corporation Draft Report* (2009) 147.

⁹ Mark Ludbrooke, *High and Dry: submission to the National Water Initiative pricing principles* (2009) Public Interest Advocacy Centre 3-4 <<http://www.piac.asn.au/publication/2009/12/091216-ewcap-sub-national-water-initiative-pricing-principles>> at 2 November 2010.

¹⁰ Independent Pricing and Regulatory Tribunal of New South Wales, 'NSW Water Fact Sheet 4 Review of Prices for Sydney Water Corporation's water, sewerage and stormwater services' (2008) [Appendix 2]. <<http://www.ipart.nsw.gov.au/investigations.asp?industry=3§or=7&show=com>> at 15 December 2009.

¹¹ Independent Pricing and Regulatory Tribunal of New South Wales, 'Fact Sheet Prices for the Hunter Water Corporation Based on Determinations and Final Report 17 July 2009' (2009) [1] <<http://www.ipart.nsw.gov.au/investigations.asp?industry=3§or=7&show=com>> at 15 December 2009.

¹² Independent Pricing and Regulatory Tribunal of New South Wales, 'Fact Sheet Prices for Water Supply, Wastewater and Stormwater Services for Gosford City Council and Wyong Shire Council Based on Determinations and Final Report May 2009' (2009) [2-3] <<http://www.ipart.nsw.gov.au/investigations.asp?industry=3§or=7&show=com>> at 15 December 2009.

¹³ Independent Pricing and Regulatory Tribunal of New South Wales, 'Independent Pricing and Regulatory Tribunal to hold public hearings in Broken Hill' (Media Release, 12 November 2009) 1.

supply of water adequate for essential purposes including drinking, cooking, washing and cleaning.

PIAC submits that an objective of primary importance to guide reform of Australia's urban water sector, is that water is an essential service and ensuring households have adequate access to an affordable, appropriate quantity and quality of water is part of Australia's international human rights treaty obligations under the *ICESCR*.

Recommendation

1. *The primary objective guiding the reform of Australia's urban water sector should be to recognise water as an essential service and ensure no residential consumer is denied access to an adequate supply of water because of an inability to pay.*

3.2 Consumer Protection Arrangements

PIAC contends that a strong consumer protection framework is essential to assist in ensuring that all customers, especially those experiencing hardship, can maintain access to water and other essential services. However, PIAC also submits that it is unreasonable to assume that this alone will adequately respond to the needs of all customers experiencing payment difficulties.

Research commissioned by PIAC into the experience of utility disconnections in 2008 revealed some of the difficulties of relying on consumer protection frameworks and hardship provisions. In spite of the existence of customer hardship charters, regulations governing disconnection procedures, water and electricity payment vouchers, payment plan requirements, pensioner rebates, and other supports and protections, many customers still experienced disconnection or flow restriction due to an inability to pay their bills. One quarter of people surveyed who had contact with their retailer in the period prior to disconnection said they were not offered a payment plan, energy or water payment vouchers, contact with a community organisation or financial counsellor, access to Centrepay, or a hardship program.¹⁴ Around half of those who were on a payment plan prior to disconnection or flow restriction said it was unaffordable.¹⁵ Just under half of respondents indicated they did not use energy or water payment vouchers to pay their bills because they did not know they existed, and over a third were unable to access vouchers once they had made the decision to seek help this way because there were no appointments or vouchers available or because they were deemed ineligible.¹⁶ Of those households that did not seek support, the research found that almost half neglected to do so because they felt embarrassed about seeking assistance and seventeen percent indicated they were afraid to do so.¹⁷ PIAC offers these figures as evidence that, whilst consumer protection frameworks provide vital support for customers, they are highly unlikely to meet the needs of all customers experiencing difficulty paying their bills.

¹⁴ Jessie Connell and Wesley Hill, *Cut Off II: The Experience of Utility Disconnections* (2009) 24.

¹⁵ *Ibid* 25.

¹⁶ *Ibid* 27.

¹⁷ *Ibid* 26.

PIAC notes that jurisdictions have committed to examining consumer protection mechanisms independently of the pricing principles¹⁸ and looks forward to joining other consumer advocacy organisations in proposing an enhanced consumer protection framework for water utility customers. However, experience does not make PIAC optimistic that reforms will ensure customers benefit from best-practice consumer protections. In spite of a chorus of concerns by consumer groups, the most recent iterations of the National Energy Customer Framework, for example, have failed to adequately serve the interests of electricity and gas customers and consumers.¹⁹ To complement consumer protection arrangements, PIAC again submits that residential water prices should be set with reference to affordability.

Recommendation

2. *A strong consumer protection framework is essential to assist in ensuring that all customers, especially those experiencing hardship, can maintain access to water and other essential services, and this should be regarded as a crucial objective to guide reform of Australia's urban water sector.*

4. Consumption and pricing

The Commission is seeking information on the affordability of water and wastewater services for low-income consumers and the efficacy and efficiency of policy measures designed to improve access and equity. The Issues Paper poses the following questions:

Should more flexible (scarcity-based) pricing be introduced to assist in managing demand in the face of the variability of rainfall-dependent supply?

Is equitable access to water and wastewater services a significant issue in Australia? What groups of consumers are particularly vulnerable and why?

If equity/social objectives are to be pursued, how should they be paid for and what are the costs to other water consumers and taxpayers?

Are water restrictions and other non-price demand management measures, inclining block tariffs and postage stamp pricing equitable?

Are the existing measures to provide universal and equitable access effective and efficient? Is there scope for improvement? What are the alternative measures available to policy makers?

4.1 Inclining block tariffs

PIAC acknowledges that there are attractions to inclining block tariffs as a mechanism for providing equitable and affordable access to water and wastewater services, particularly where there is an initial block priced below cost (ie, a social tariff). However, PIAC does

¹⁸ Department of the Environment, Water, Heritage and the Arts, *National Water Initiative pricing principles Consultation Regulation Impact Statement (2009)* 4.

¹⁹ Joel Pringle, *PIAC Submission to the First Exposure Draft Legislation of the National Energy Customer Framework (2009)* Public Interest Advocacy Centre <<http://piac.asn.au/publications/pubs/subjectindex.html#utilities>> at 15 December 2009; *National Energy Retail Law Second Exposure Draft 2009 (Cth)*; *National Energy Retail Rules Second Exposure Draft 2009 (Cth)*.

not support the adoption of inclining block tariffs that discriminate against households that would reasonably be expected to consume large quantities of water to secure an adequate standard of living. This includes households with residents that need water for medical purposes, such as kidney dialysis; households with a large number of members, including families with children; and households that accommodate transitory populations, such as Indigenous Australians. PIAC considers that such households would need to be eligible for the initial block or social tariff, or be exempted from the higher usage charges which would be incurred in the higher blocks.

PIAC also considers it unfair to impose such tariffs on households that do not have individual water meters and cannot check and amend their level of consumption to avoid paying higher prices. PIAC is particularly concerned that where such households are also low-income earners, they will struggle to pay the additional costs incurred by consumption at higher tariff levels. This includes residents in public housing estates, residential parks and rooming houses.

However, PIAC does caution that as water is an essential service, and has low price elasticity, pricing may not be an effective way to manage demand and reduce consumption. Accordingly, as a demand management tool, inclining block tariffs may not be an appropriate method of conserving water. One of the reasons for this is that, potentially due to infrequency in billing, consumers often do not see the price signal, or do not change their consumption patterns if they do.

Recommendation

- 3. Any consideration of the adoption of inclining block tariffs should also take account of the needs of households that can reasonably be expected to consume large quantities of water, and their need to be exempt from usage charges beyond the first tier.*

4.2 Scarcity Pricing

An alternative to inclining block tariffs is scarcity pricing. PIAC opposes the introduction of scarcity pricing for residential households.

The Productivity Commission has stated that scarcity pricing creates incentives for people to reduce their water use.²⁰ In 2008, IPART produced a working paper that identified the extent to which prices would need to rise to generate a demand response. Employing a price elasticity of demand of -0.3, based on a survey of price elasticity of demand studies, and an allowance of 155 litres, IPART determined that the price of water would need to increase by 90 per cent to achieve a 10 per cent demand reduction or 160 per cent to achieve 19 per cent demand reduction.²¹

²⁰ Productivity Commission, *Towards Urban Water Reform: A Discussion Paper*, Productivity Commission (2008) [48] <<http://www.pc.gov.au/research/commissionresearch/urbanwaterreform>> at 19 October 2010.

²¹ Independent Pricing and Regulatory Tribunal of New South Wales, *Water scarcity: Does it exist and can price help solve the problem?* (2008) [15]

PIAC submits that many low-income households have limited discretionary water use and thus little opportunity to cut their water consumption when faced with higher prices. They are also unlikely to have the resources necessary to improve their water consumption by trading-in existing appliances, such as washing machines, for more water-efficient models. As such, the adoption of scarcity pricing is likely to lead to higher water bills for these households. Already struggling to make ends meet, many such households cannot afford this additional expense. At the other end of the spectrum, PIAC contends that an increase in the price of water is unlikely to markedly change the consumption by high-income households that are adequately resourced to accommodate water price increases.

As indicated above, as water is an essential service, and has low price elasticity, PIAC is skeptical of the effectiveness of pricing tools such as water scarcity, in managing demand and reducing consumption.

PIAC also notes that many households in NSW are already paying for water scarcity. Sydney Water customers, for example, currently pay an additional \$90 per year for a desalination plant that will be used when dam levels decline to a predetermined level.²²

Recommendation

- 4. That scarcity water pricing, as a measure for pursuing universal and equitable access, should not be pursued.*

4.3 ‘Postage-stamp pricing’

‘Postage-stamp pricing’ refers to ensuring uniform water charges across regions. This would prevent the differentiation of water charges by the cost of servicing different customers based on location and service standards.

PIAC is concerned that differentiation of water charges has the potential to generate adverse outcomes for some already disadvantaged water consumers. Specifically, PIAC is concerned that some low-income households in communities that are expensive to service may end up being charged more for water and may in turn experience increased difficulty paying their water bills. Where customers serviced by the same water authority are eligible for the same dollar-value rebates, the adoption of different prices within a supply area would distort the value of these concessions, to the detriment of some low-income households. PIAC notes that disadvantaged consumers in remote areas may be further disadvantaged by this method of pricing. In particular, Indigenous communities in remote regions may be particularly affected.

<http://www.ipart.nsw.gov.au/search/search_results.asp?sidebarSearchTextBox=scarcity+pricing> at 19 October 2010.

²² Independent Pricing and Regulatory Tribunal of New South Wales, ‘Sydney Water’s charges to rise’ (Media Release, 28 March 2008) [1]
<http://www.ipart.nsw.gov.au/investigation_content.asp?industry=3§or=7&inquiry=135&doctype=7&doccategory=1&docgroup=1> at 19 October 2010.

PIAC opposes any principle that permits residential consumers residing in different geographical areas serviced by the same water authority to be charged different water charges. PIAC recognises that the adoption of postage-stamp pricing addresses this concern. However, PIAC notes that this may involve some subsidy by consumers in metropolitan areas or regional centres of those consumers in remote locations. Where that occurs, PIAC advocates that additional assistance measures be provided for disadvantaged consumers in urban areas or regional centres whose charges increase by virtue of postage-stamp pricing.

4.4 Water restrictions

PIAC supports water restrictions as an effective demand management tool that plays an important role in reducing the need for expensive capital investment. In addition, water restrictions send an important water conservation message to consumers. However, PIAC cautions that reduced consumption as a result of adhering to water restrictions which carry the threat of sanctions, should not result in increased water charges to consumers by virtue of water retailers increasing charges to compensate for losses arising from reduced consumption.

4.5 Rebates and income support

PIAC is aware of an inequity in the availability of social support to consumers across New South Wales. Apart from Sydney Water and Hunter Water, there are 106 local water utilities responsible for providing water supply and sewerage services to NSW non-metropolitan urban communities. These utilities service 1.8 million people in NSW.²³ A number of programs are available to customers of Sydney Water and Hunter Water that are not extended to customers of water utilities owned and operated by local councils. PIAC supports the development of a state based framework to address hardship issues in a consistent and comprehensive manner across NSW.

In 2008, the NSW Minister for Water announced an independent Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW. The resulting report recommended strengthening the regulation of local water utilities, complemented with an adequate reporting and monitoring framework and the designation of a regulator with adequate enforcement powers.²⁴ PIAC submits that such a framework must also address hardship issues in a consistent manner across NSW.

Until a comprehensive statewide framework to address hardship issues is implemented, low-income and other disadvantaged residents in many local areas across NSW will require support from their local water utility to manage increased water bills. PIAC believes that all councils must develop mitigation measures that include the following:

²³ NSW Government, *Local Water Utilities (2010) Office of Water* <<http://www.water.nsw.gov.au/Urban-water/Local-water-utilities/Local-water-utilities/default.aspx>> at 21 October 2010.

²⁴ Ian Armstrong & Colin Gellatly, 'Report of the Independent Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW, NSW Government' (2008) <<http://www.water.nsw.gov.au/default.aspx?ArticleID=258#response>> at 21 October 2010.

- vouchers to assist customers experiencing financial difficulty to pay their water bills;
- water audits to assist low-income and large households with high water bills to reduce their water consumption;
- No Interest Loans Schemes that assist residents to purchase water efficient appliances like washing machines;
- access to Centrepay so that residents can elect to have a small amount of their Centrelink benefits automatically allocated to pay their water bills each fortnight;
- council membership of the Energy and Water Ombudsman so that consumers have access to a free and independent complaints service;
- training for council staff to assist them to recognise and respond to customers in financial difficulty including dealing with customers in a sensitive manner, facilitating access to council social support, and referring customers to local community welfare organisations where appropriate.

PIAC advocates a transparent and consistent approach to regulating water supply including consumer protection and hardship programs. With smaller water authorities providing services to consumers across NSW, it is virtually impossible to educate water consumers en masse about assistance measures available to help keep them connected to an essential service. More importantly, it is difficult for water consumers to find information on assistance and support because there is no central hub containing any such information. In contrast, NSW energy consumers are relatively well served by information provided by Industry & Investment NSW. The Department's website lists a range of assistance measures that consumers can access including the NSW Energy Rebate, Energy Accounts Payment Assistance (EAPA) Vouchers and Medical Energy Rebates.²⁵ While consumers may have to make further enquiries with their energy retailer, the website provides useful information on levels of rebates, eligibility and how to apply. An energy information telephone line is also available to provide this information in a non-electronic format. PIAC is not aware of any comparable sources of information on the provision of water rebates and assistance measures on offer in NSW.

4.6 Hardship policies

As indicated in Part 4.5 above, the lack of a consistent approach to hardship across the 106 local water utilities in NSW results in an inequity and inconsistency in the availability of hardship programs for disadvantaged consumers across NSW.

PIAC supports the development of a comprehensive statewide framework to address hardship issues in relation to water and wastewater usage. Such a framework should provide that all water utility authorities provide a hardship program for people in financial hardship, and provide for mandatory minimum elements for such hardship schemes, including:

- a comprehensive definition of hardship;
- a framework for early identification of customers in hardship;

²⁵ NSW Government, Energy Rebates (2010) *Industry & Investment*
<<http://www.industry.nsw.gov.au/energy/customers/rebates>> at 11 November 2010.

- a range of options for payment assistance, including payment plans, deferment of payment and debt waiver;
- a commitment to suspend all collection, enforcement or access restriction while the customer is participating in the hardship program;
- a framework to enable regular monitoring of hardship agreements; and
- appropriate staff training to assist staff in early detection of customers in potential hardship, appropriate communication with such customers, and awareness of the elements of the organisation's hardship program.

5. Conclusion

PIAC urges the Productivity Commission to remain mindful that water is an essential service that is intrinsically linked to human health and sustenance. In light of Australia's obligations to ensure households have adequate access to an affordable, appropriate quantity and quality of water, under the *International Covenant on Economic, Social and Cultural Rights*, there is a strong case for adopting access and affordability objectives to guide urban water sector reforms. PIAC also urges the Productivity Commission to maintain an awareness that low-income and vulnerable consumers have low levels of discretionary water use and limited capacity to reduce their water consumption. Given that high water prices would place these consumers in an extremely vulnerable position, PIAC contends that measures to promote efficiency through pricing tools, such as scarcity pricing, should be avoided.