



**A rare opportunity –
PIAC submission to the NSW Government's
discussion paper: *Rebuilding NSW***

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Introduction

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 (then) 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 NSW Trade & Investment for its work on energy and water, and from Allens 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

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;
- St Vincent de Paul (NSW);
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Retirement Villages Residents Association;
- Physical Disability Council NSW; and
- Affiliated Residential Park Residents Association.

1. Context for the partial lease of the networks

1.1 PIAC's position on ownership

PIAC thanks the NSW Government for the opportunity to provide comment on its Discussion Paper, *Rebuilding NSW* (the Discussion Paper).

The NSW Government has announced its intention to lease 49% of the four NSW electricity networks. The four networks are: Ausgrid, Endeavour Energy and Essential Energy (all distribution networks); and Transgrid (a transmission network). However, the NSW Government has also signalled that it plans to preserve ownership of Essential Energy that a stake equivalent to 49% of the total will be leased from the other three.

PIAC does not advocate a particular position with respect to who should own electricity networks (or be the lease holder). PIAC notes, however, that the Productivity Commission's (PC) 2013 report into Electricity Network Regulatory Frameworks contained data illustrating that operating expenses per kilometre and per customer were greater for public than privately-owned networks.

It is widely argued¹ that over the last 5-8 years the regulatory framework has facilitated an over-investment in networks, particularly in state-owned networks. This is said to flow at least in part from the incentive for state governments to set reliability standards and investment levels to maximise the return to those governments. This is not a problem of ownership per se, but an issue of the regulatory framework and the expectations of state governments on the level of return from network assets.

1.2 Network regulation

Increasing network costs were a key driver of the steep rises in electricity prices in NSW between 2008 and 2013. In response to these increases, Australian governments made changes to the National Electricity Rules and the AER was given increased powers to scrutinise network spending proposals and exercise its discretion in making determinations. These changes, including the development of the AER's Better Regulation Guidelines, are intended to deliver better outcomes for consumers.

The AER is currently in the process of setting the cost of NSW electricity networks for five years (2014/15 to 2018/19). Having invested significant resources in the development of the Better Regulation Guidelines, PIAC is hopeful that the AER will set a fairer network price than that proposed by the networks. If the AER is able to exercise its new power and determine fair and reasonable network prices, consumers will benefit through lower prices in the coming years.

As long as there is an effective regulatory framework, and the Australian Energy Regulator (AER) is given sufficient resources to operate effectively, price outcomes for consumers should be broadly similar regardless of ownership structure. However, as previously stated, in recent times weaknesses in the regulatory framework have contributed to consumers paying higher network prices.

¹ See for example: West, M, 'Gold plating' rife, assets in for a hiding', *The Sydney Morning Herald*, 31 January 2013, <http://www.smh.com.au/business/gold-plating-rife-assets-in-for-a-hiding-20130131-2dmjg.html>, retrieved 10 September 2014.

² Derum, O. 2014. *Putting consumers first: PIAC submission to the Australian Government's Issues Paper for the*
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1.3 Historic over-investment and stranded assets

Many consumer advocates, including PIAC, have argued that the NSW networks overinvested in the 2009-14 regulatory control period.² As a result of declining demand, networks have built infrastructure that is not currently required and may not be required in the future. This raises the question whether the value of these stranded assets should be written down by the networks (or the owner, the NSW Government), reducing the size of their regulatory asset base (RAB). Because consumers pay networks a return on their RAB, the size of the RAB has a direct impact on final retail bills. However, writing down the RAB would also reduce the proceeds of the proposed lease arrangement.

PIAC considers this trade off (between a higher lease price and higher overall bills) to be an important question for the owners of electricity network assets – the people of NSW and their Government. This issue is worthy of more detailed consideration before the arrangements for the partial lease are finalised by the NSW Government.

1.4 Benefits to the people of NSW

The four NSW electricity networks provide significant dividends to the NSW Government. According to the most recent budget papers, earnings before interest, tax, depreciation and amortisation are projected to be above \$3.5 billion per annum over the forward estimates.³ Should partial privatisation occur, a proportion of revenue will go to private owners, including potential offshore investors rather than the NSW Government.

Accordingly, PIAC's view is that the networks should only be leased if the benefit of the reinvestment outweighs the cost of the forgone revenue.

2. Uses of the revenue from the lease

The NSW Government has indicated that the proceeds of the lease will be placed in the Restart NSW fund. Funding from Restart NSW will be invested in 'essential infrastructure', including public transport, roads and 'infrastructure that may improve the competitiveness of the state'.⁴ The Discussion Paper further identifies 'strategic priorities' including Sydney Rapid Transit, Sydney Roads Renewal and the Regional Water Fund.⁵

PIAC supports the allocation of the proceeds of the lease to productive infrastructure, including public transport and measures to improve water security and quality in regional areas. In addition, PIAC believes that proceeds from the lease should be directed to two specific areas: investment in social housing and in programs to help make energy more accessible for low-income and vulnerable consumers.

² Derum, O, 2014, *Putting consumers first: PIAC submission to the Australian Government's Issues Paper for the development of an Energy White Paper*, 2. Available at: http://www.piac.asn.au/sites/default/files/publications/extras/14.02.07_putting_consumers_first_-_piac_submission_to_the_australian_governments_issues_paper_for_an_energy_white_paper.pdf.

³ NSW Government, 2014, *Budget Statement 2014-15, Budget paper no 2*, 9-11.

⁴ NSW Government, *Restart NSW*, website, <http://www.infrastructure.nsw.gov.au/restart-nsw.aspx> as at 11 September 2014.

⁵ NSW Government, 2014, *Discussion paper – Rebuilding NSW*, 5.

2.1 Social housing

PIAC shares the view of other community organisations that the proceeds of the lease represent a one-off opportunity for a significant investment in social and community housing. These organisations include the Council of Social Services of NSW (NCOSS) of which PIAC is a member, and the St Vincent de Paul Society of NSW.

PIAC takes the view that any investment in social housing will benefit the NSW economy. Secure and stable housing is a key requirement for marginalised members of the community to rebuild their ability to participate in society and the economy.

They also become less reliant on emergency assistance and are less likely to be the subject of expensive judicial proceedings or incarceration. PIAC's 2013 report, *Beyond the prison gates*, examined the systemic issues that lead to people exiting prison becoming homeless. The report noted the importance of 'stable, safe housing in terms of reintegrating into the community and moving away from a life of reoffending and returning to prison',⁶ the significant cost of which is met by NSW taxpayers.

2.1.1 Opportunities to leverage social housing investment

PIAC believes that opportunities exist to use proceeds from the lease of NSW electricity networks to leverage further investment in social housing from community housing providers. For example, the NSW Government could invite expressions of interest from community housing providers to receive matching funding for their own investments in social housing.

PIAC also notes that the Premier's Innovation Initiative has foreshadowed a call for expressions of interest in relation to public housing in NSW.⁷ PIAC submits that as part of that initiative, funding could be made available to the providers with the best proposals to increase social housing stock. According to the NSW Government, the waiting list for such accommodation currently contains 58,000 households.⁸

Recommendation 1

PIAC recommends that the NSW Government allocate funding from the lease of the NSW electricity networks to increase investment in social housing.

2.2 Improving accessibility of energy

Because the assets the NSW Government is proposing to part lease have been paid for by electricity consumers, PIAC submits that a proportion of the proceeds should go to energy-related programs. PIAC has two key suggestions.

Firstly, the partial lease of the electricity networks represents a good opportunity to review the energy concession and emergency assistance arrangements in NSW. Secondly, funding should be made available to programs that assist low-income and vulnerable consumers to purchase more energy-efficient appliances.

⁶ Schetzer, L, 2013, *Beyond the prison gates*, Sydney: PIAC, ix. Available at: www.piac.asn.au/publication/2013/08/beyond-prison-gates.

⁷ NSW Government, *Premier's Innovation Initiative*, webpage, <http://www.nsw.gov.au/innovate/social-housing-assets> as at 11 September 2014.

⁸ Ibid.

2.2.1 Better electricity rebates

PIAC believes that a review of the energy concessions regime in NSW would be of great benefit to low-income and vulnerable electricity consumers. The proposed lease of electricity network assets represents a timely opportunity to undertake such a review. PIAC has argued consistently for the need for percentage-based rebates to ensure low-income and vulnerable consumers are receiving adequate financial assistance.

PIAC notes the findings from the Australian Council of Social Service's discussion paper, *Preventing shocks and addressing energy poverty*, which highlighted that:

- a proportional rebate that reflects actual energy bills would better assist families on low incomes, and give large families with higher base energy needs a higher rebate;
- a proportional rebate could be funded by combining funding for the Family Energy Rebate and Low-Income Household Rebate; and
- low-income regional households are paying more, but getting the same rebate, even when they use the same amount of electricity.⁹

PIAC notes that the NSW Government has begun a review of the Life Support Rebate, in which PIAC is participating. As well as this review, PIAC recommends that a wider examination of the NSW concessions regime be undertaken in time to allow any changes to be considered by the NSW people at the March 2015 election, along with the proposed lease.

Recommendation 2

PIAC recommends that the NSW Government conduct a review of energy concessions, with a view to funding a move to percentage-based rebates from the proceeds of the part-lease of electricity networks.

2.2.2 Energy efficiency or NILS funding

The most sustainable way to reduce the bills of low-income and disadvantaged consumers in NSW is to help them to reduce their use of energy. The NSW Government's Home Power Saver Program was successfully rolled out to 220,000 low-income households providing advice and devices to facilitate small energy savings by these households. However, this program has finished and it is unclear what will replace it.

PIAC suggests that the NSW Government use some of the proceeds of the proposed lease to establish a permanent fund for energy efficiency programs for low-income consumers. The nature of these programs should be able to change over time, but one example could be that the Government provides capital to new or existing no interest loan schemes (NILS). NILS provides funding for eligible low-income consumers to purchase essential household appliances, such as fridges and washing machines. By making such funding available, low-income consumers are able to purchase more energy-efficient appliances, which have a higher up-front cost but a lower on-going cost.

The NSW Government already contributes funding to NILS across the state through Fair Trading NSW. However, PIAC recommends that more funding be made available to such programs. NILS

⁹ Australian Council of Social Service, 2014, *Preventing shocks and addressing energy poverty*, 13. Available at: http://acoss.org.au/images/uploads/Concessions_paper_2014_FINAL.pdf as at 11 September 2014.

represent excellent value for money, as loans are repaid and become available for re-loan to another consumer. The economic benefit of the program is, therefore, much greater than the initial amount made available.

Recommendation 3

PIAC recommends that the NSW Government provide increased funding to NILS from the proceeds of the proposed lease.

3. Conclusion

Once again, PIAC thanks the NSW Government for the opportunity to provide comment on the Discussion Paper. PIAC does not have a particular position on whether electricity network assets should be retained in public hands or leased. As long as there is an effective regulatory framework in place, and the AER is sufficiently resourced to carry out its responsibilities, price outcomes for consumers should be broadly similar regardless of ownership.

PIAC supports the NSW Government's proposal to invest the proceeds on the lease in infrastructure such as public transport and securing regional water resources. In addition, PIAC argues that a portion of the proceeds should be invested in two key areas.

Firstly, the NSW Government should direct funding towards investment in social housing. There are opportunities to use such funding to leverage further investment from community housing providers, including through the existing Premier's Innovation Initiative. Secondly, PIAC argues that some of the proceeds should be used to help low-income and vulnerable consumers retain access to essential energy services. This includes through enhanced concessions and support to reduce consumption, for example through purchasing more efficient appliances through NILS.