



public interest
ADVOCACY CENTRE LTD

High and dry: submission to the National Water Initiative pricing principles

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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 consultation

PIAC welcomes the opportunity to comment on the *Consultation Regulation Impact Statement (RIS)* incorporating the *Draft National Water Initiative Pricing Principles* (the draft principles).

The objectives of the draft principles are to assist jurisdictions to achieve consistency in water charges and provide a best-practice road map for water pricing methodologies.¹ The objectives of the draft principles focus on four areas: recovering capital expenditure; setting urban water tariffs; recovering the costs of water planning and management; and recycled water and stormwater reuse.²

PIAC provided comments on the draft principles as part of a targeted consultation in November 2008³, and takes this opportunity to reiterate concerns about the lack of consideration of affordability in the principles, to question the implied reliance upon consumer protection mechanisms, and to comment on options for urban water use charges.

3. 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 *International Covenant on Economic, Social and Cultural Rights* (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.

The treaty body for the ICESCR, the United Nations Committee on Economic, Social and Cultural Rights, in its General Comment No 15 of 2002⁵, 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;

¹ Department of the Environment, Water, Heritage and the Arts, *National Water Initiative pricing principles Consultation Regulation Impact Statement* (2009) 2.

² Ibid 6.

³ Mark Ludbrooke, *Draft National Water Pricing Principles: Comments to the National Water Initiative Committee* (2008).

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).

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.

- ...
- (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-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. As such, in its submission on the draft principles in November 2008, PIAC urged 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

PIAC is extremely disappointed to learn that that draft principles continue to fail to recognise this entitlement.

Many households already face significant water price increases. Sydney Water customers who consume 200 kilolitres of water per annum are in the middle of a 32.6 per cent per cent increase in their water bills.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 More recently still, IPART began

⁷ National Water Commission, *National Performance Report 2006-2007 Urban Water Utilities*, National Water Commission (2009) <<http://www.nwc.gov.au/www/html/381-2006-07-national-performance-report---urban-water-utilities.asp>> at 15 December 2009.

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, above n 3, 2.

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*

reviewing the price of water for residents of Broken Hill and 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 supply of water adequate for essential purposes including drinking, cooking, washing and cleaning.

PIAC reiterates its request for DEWHA to adopt a pricing principle that recognises water as an essential service and obliges regulators, government departments and local councils to consider the impact of variations in price on residential consumers.

Recommendation

1. *That the draft National Water Initiative pricing principles be amended to oblige price setters 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.*

4. Consumer Protection Arrangements

DEWHA has responded to concerns about affordability by implying they should be handled by consumer protection arrangements rather than pricing mechanisms.¹⁴ 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 upon 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 weren't offered a payment plan, energy or water payment vouchers, contact with a community organisation or financial counsellor, access to Centrepay, or a hardship program.¹⁵ Around half of those who were on a payment plan prior to disconnection or flow restriction said it was unaffordable.¹⁶ 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.¹⁷ 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 17 per cent indicated they were afraid to do so.¹⁸ 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.

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.

¹⁴ Department of the Environment, Water, Heritage and the Arts, above n 1, 4.

¹⁵ Jessie Connell and Wesley Hill, *Cut Off II: The Experience of Utility Disconnections* (2009) 24.

¹⁶ *Ibid* 25.

¹⁷ *Ibid* 27.

¹⁸ *Ibid* 26.

PIAC notes that jurisdictions have committed to examining consumer protection mechanisms independently of the pricing principles¹⁹ 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.²⁰ To complement consumer protection arrangements, PIAC again submits that residential water prices should be set with reference to affordability.

PIAC is also concerned that the new pricing principles could be finalised and implemented before there is any commitment to improved consumer protection frameworks. Acknowledging that the application of pricing principles is likely to lead to water price increases in some jurisdictions, PIAC submits that the review of pricing principles and consumer protection measures must occur concurrently and that pricing principles must not be employed until a best-practice consumer protection framework is in place.

Recommendation

2. *That the review of the National Water Initiative pricing principles and consumer protection measures be conducted concurrently and that the pricing principles not be employed until a best-practice consumer protection framework is in place.*

5. Urban water-usage charge tiers

The RIS notes that the draft pricing principles allow governments to decide to adopt more than one tier for the water-usage charge.²¹ As noted in comments submitted last year, PIAC does not support the adoption of inclining block tariffs, which discriminate against households who would reasonably be expected to consume large quantities of water to secure an adequate standard of living.²² This includes households with residents that need water for medical purposes, such as kidney dialysis; households with large numbers of members, including families with children; and households that accommodate transitory populations, such as Indigenous Australians. 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. PIAC submits that if governments are permitted to implement inclining block tariffs, they must exempt certain customers from usage charges beyond the first tier.

Recommendation

3. *That the draft National Water Initiative pricing principles be amended to prohibit the adoption of inclining block tariffs or provide that households that can reasonably be expected to consume large quantities of water be exempt from usage charges beyond the first tier.*

¹⁹ Department of the Environment, Water, Heritage and the Arts, above n 1, 4.

²⁰ 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).

²¹ Department of the Environment, Water, Heritage and the Arts, above n 1, 18.

²² Mark Ludbrooke, above n 3, 3.

6. Scarcity pricing

The RIS introduces the idea of scarcity pricing as an alternative to two-part tariffs.²³ PIAC takes this opportunity to express its strong objection to the adoption of water pricing principles that facilitate 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.²⁴ 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.²⁵

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 can not 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.

PIAC also notes that many households 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.²⁶

Recommendation

4. *That the draft National Water Initiative pricing principles be amended to prohibit the adoption of scarcity water pricing.*

7. Postage-stamp pricing

The draft principles allow for water charges to be differentiated by the cost of servicing different customers based on location and service standards.²⁷ As noted in earlier comments on the draft principles, PIAC has strong concerns that this may generate adverse outcomes for some already disadvantaged water consumers.²⁸ Specifically, PIAC is anxious 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

²³ Ibid.

²⁴ Productivity Commission, *Towards Urban Water Reform: A Discussion Paper*, Productivity Commission (2008) [48] <<http://www.pc.gov.au/research/commissionresearch/urbanwaterreform>> at 14 December 2009.

²⁵ Independent Pricing and Regulatory Tribunal of New South Wales, *Water scarcity: Does it exist and can price help solve the problem?* (2008) [15] <http://www.ipart.nsw.gov.au/search/search_results.asp?sidebarSearchTextBox=scarcity+pricing> at 15 December 2009.

²⁶ 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 14 December 2009.

²⁷ Department of the Environment, Water, Heritage and the Arts, above n 1, 19.

²⁸ Mark Ludbrooke, above n 3, 3.

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. As such, PIAC strongly opposes any principle that permits residential consumers residing in different geographical areas serviced by the same water authority to be charged different water charges and urges the adoption of principles that mandate postage-stamp pricing.

Recommendation

5. *That the draft National Water Initiative pricing principles be amended to ensure water utility customers benefit from postage-stamp pricing.*

8. Conclusion

The price of water directly affects the capacity of consumers to maintain access to an adequate supply of this essential service. This is especially the case for lower-income households which spend a larger proportion of their income on utilities than higher-income households, often have little discretionary water usage, and limited means to invest in water efficient appliances. With this in mind, it is imperative that the water pricing principles to underpin water price determinations and reviews serve the best interests of residential consumers.

To this end, PIAC recommends that DEWHA develops an additional principle to ensure that no one has their water flow restricted or disconnected based on an inability to pay. PIAC also contends that the principles must prohibit scarcity pricing and safeguard postage-stamp pricing. Furthermore, the pricing principles must not be employed until the consumer protection frameworks are reviewed, improved and available for consumers.

PIAC thanks DEWHA for a second opportunity to comment on the draft pricing principles and urges the Department to incorporate its recommendations in the principles that will influence access to this essential service.