



**public interest**  
ADVOCACY CENTRE

## **Review of WaterNSW Rural Bulk Water Prices from July 2021**

### **Draft Determination**

**23 April 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:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- The Sydney Alliance; and
- Mission Australia.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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## **Introduction**

PIAC welcomes the opportunity to provide input in response to the Independent Pricing and Regulatory Tribunal's (IPART) draft determination (the draft) for WaterNSW's rural bulk water prices from July 2021.

We welcome the draft addressing a number of issues PIAC raised in response to the Issues Paper, and IPART's commitment to proceed with a 4-year determination period. However, a number of issues raised in the draft and during the public hearing held after its release either have not been resolved or require further consideration. PIAC considers some of these unresolved issues, such as the approval and funding of fishways, the ratio of fixed to variable costs, and the handling of metering reform implementation costs, reflect larger issues of principle which need to be addressed outside of just this pricing determination.

In the remainder of this submission, PIAC will respond to specific aspects of the draft and indicate where these issues should be addressed as part of larger, principles-based assessment processes.

## **Expenditure and investment**

The draft highlights significant overruns on forecast and allowed expenditure and costs. This determination period will see significant cost increases and bill impacts for licence-holders and users, and will involve WaterNSW undertaking a number of large, ongoing projects with material cost implications. In this context the community, licence holders and users need confidence in the ability of WaterNSW to manage operational and capital costs efficiently and deliver consistent outcomes. PIAC sees a number of areas for concern in the draft that require further assessment by IPART.

### **Operational expenditure**

PIAC is not confident future forecasts by WaterNSW are an accurate basis for revenue and pricing determinations.

WaterNSW's operating expenditure over the previous determination period was 38% higher than approved. The causes cited by WaterNSW, however, such as under-estimates of scheduled overtime, land tax, direct labour and on-costs, should be predictable. Flood operations, also cited as a contributor, may be more variable but together these are fundamental aspects of water management and business operation.

PIAC is concerned that the inability to accurately forecast and control these costs reflects flaws in the business structures and decision-making processes in WaterNSW. The operating expenditure forecasts for WaterNSW over the 2021 period were proposed to be 42% higher than those used to set prices in the previous period, and 43% higher than the actual operational expenditure in the period. These costs are substantial and have a material impact on users and the affordability of water services.

PIAC supports IPART's draft determination to apply catch up and ongoing efficiency savings to WaterNSW's forecasts for operating expenditure. IPART should continue to monitor the operational decision-making structures and processes of WaterNSW to ensure they are capable of managing operational expenditure efficiently.

## **Capital Expenditure**

PIAC is not confident capital expenditure forecasts by WaterNSW are an accurate basis for revenue and pricing determinations.

WaterNSW overspent forecast capital expenditure by \$72.1 million, excluding drought-related expenditure, in the 2017 period. While IPART has deemed this spending to be efficient, PIAC considers it suggests WaterNSW is unable to forecast and manage costs on capital projects effectively. This is concerning as WaterNSW has responsibility for delivering substantial infrastructure investments over the 2021 period. These projects affect the NSW Government budget, and the ongoing costs recovered from users and the community.

PIAC supports IPART's determination to apply catch-up and ongoing efficiency adjustments to the forecast capital expenditure of WaterNSW. IPART should continue to monitor WaterNSW's processes for forecasting capital project costs, and ensure they are capable of delivering capital projects at efficient costs.

## **Infrastructure investment decisions**

WaterNSW's handling of fishways offset projects reflects a lack of transparency and rigour in the processes to assess alternative infrastructure and non-infrastructure solutions, and implement measures that best manage cost, benefit and risk.

As IPART's decision notes, the consultants' assessment found WaterNSW has not done sufficient cost-benefit analysis of alternative options for delivering fishways, or business plan development for proposed projects worth over \$70 million. This is unacceptable and cause for concern. With WaterNSW responsible for developing and implementing Government-initiated infrastructure projects over the coming period, the processes for assessing and developing investment options warrant urgent attention from IPART.

The Productivity Commission draft report on National Water Reform<sup>1</sup> highlights a lack of transparency in decision-making processes related to water infrastructure investments in NSW, including all major infrastructure projects to be undertaken by WaterNSW over the course of this determination. It found processes for assessing the efficiency and benefit of potential investments were compromised, with the full range of alternatives not properly considered, and impacts, costs and benefits inadequately assessed. The Commission concluded this led to infrastructure investments proceeding without any demonstrated benefits, which were costlier, or which had unrecognised impacts and costs.

PIAC recommends IPART require transparent assessment of infrastructure projects by or on behalf of WaterNSW. This process should assess all alternatives to the proposed project, including non-infrastructure responses, and their impacts, costs, benefits and risks for users and

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<sup>1</sup> Productivity Commission, [National Water Reform 2020: Draft Report](#), February 2021

the community over the long term. We understand IPART does not have a formal role in assessing these projects as part of the pricing determination, as the capital expenditure will be funded by the NSW and Commonwealth Governments. However, the example of fishway projects demonstrates the need for robust assessment of infrastructure projects, as they have significant ongoing implications for the efficiency of WaterNSW operations and the efficiency and affordability of costs for WaterNSW users, and the NSW community.

## **Charges and pricing structures**

PIAC welcomes IPART's assessment of the efficiency of Murray Darling Basin Authority (MDBA) and Dumaresq-Barwon Border Rivers Commission (BRC) contributions, and how the resulting costs are shared between Water Administration Ministerial Corporation (WAMC) and WaterNSW. PIAC recommends IPART to take a similar approach in other aspects of the determination process, where external elements have material upfront and ongoing impacts on WaterNSW users, such as infrastructure investment decisions, as outlined above.

PIAC supports IPART's decision to adjust the MDBA and BRC costs to be recovered from WaterNSW and WAMC users, and to use a building block approach to calculate the efficient costs to be recovered. These decisions should help facilitate greater transparency, consistency and efficiency in the recovery of costs for water services.

PIAC recommends IPART consider a differential ratio of fixed to variable charges for high security and general security entitlement holders. This should include rural bulk water, MDBA and BRC charges, in conjunction with existing premiums paid for high security entitlements. PIAC contends further differentiation in charges and pricing for high and general security entitlements better reflects the nature of these entitlements, and is a better means of recovering costs more affordably and according to how they are incurred. PIAC provides greater detail regarding this in answer to question 3.

PIAC recommends IPART ensure consistency of charging structures across WaterNSW, and WAMC ensure charges are as simple, transparent and understandable to users as possible.

## **Water entitlement and usage forecasts**

While the wider analysis of entitlements and usage forecasts in the draft is welcome, it does not address worsening issues with the current method.

The draft presents evidence of the wide variation in actual yearly water sales over the decade from 2010-2019<sup>2</sup>, including up to 2,000,000 ML above or below the forecasts sales. The draft outlines some of the issues with utilising a rolling 20-year average to forecast future water sales over the coming regulatory period. However, IPART should also consider the following key issues:

- Entitlement forecasts are determined according to legislation and remain constant rather than being periodically updated in response to evidence. Many costs are recovered per entitlement and so must be periodically updated in order to be a meaningful basis for cost recovery.

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Inflows and availability are already steadily declining in many water systems to levels well below what entitlements indicate, making the current approach increasingly inappropriate.

- The disconnect between entitlements, forecast usage and actual usage levels is so substantial it renders many entitlements unfit for purpose. While entitlements remain constant at just under 8,000,000 ML, the 20-year average of water sales is less than 5,000,000 ML. Actual water sales have not exceeded 7,000,000 ML in the last 11 years at least, and have been less than 3,500,000 ML in 2010, 2015 and 2019.
- Further consideration of the drivers of water usage is needed. The paper discusses water sales forecasts, and outlines examples of data that may assist in understanding water usage drivers. Geographic locations, environment and other entitlement and licence data should be considered further. It is also useful to examine usage trends to determine the productive uses of water attached to entitlements and allocations. This information can indicate, for example, a trend towards production with more constant water requirements (such as almonds) in some areas. This trend can indicate more constant future water sales in those areas as water entitlements and allocations are shifted from more flexible uses.

While these issues extend beyond the direct responsibility of IPART, they have material impact on the accuracy of forecasting, the efficiency of investments, operations, and cost recovery. Most importantly, they are crucial aspects of the long-term sustainability of affordable water services.

PIAC recommends IPART highlight the urgent need to re-evaluate the approach to forecasting and setting entitlements and water sales, to ensure they are an effective basis for efficient and sustainable water operations.

## **Non-urban metering reform**

PIAC supports the accelerated implementation of non-urban metering reform. This reform is a high priority and an urgent requirement for improved transparency, compliance and confidence in water operations and management.

IPART's assessment that upgrade costs related to compliance with metering reforms should be borne by users is reasonable. However, we note during the public forums several stakeholders contended that, as a Government initiated reform, it would be appropriate for the Government to share some or all of the initial implementation costs of upgrading metering. This warrants further consideration as part of more detailed assessment of the costs and benefits of metering reform options. There is precedent as previous reforms or significant investment processes with material affordability impacts have involved up-front costs being partially or totally assumed by governments. Further examination of such an approach should consider:

- Whether it is appropriate for the government to assume a share of the upgrade implementation costs (initial installation, upgrade, certification and compliance) for government meters.
- Whether implementation should be amended to include an option for the rollout of new government meters to assist users meet the reform requirements without unreasonable



implementation costs. This would also provide greater potential cost efficiencies in metering procurement and installation.

- Treating implementation costs related to upgrading or installing new government meters similarly to other government infrastructure investments 'gifted' to WaterNSW. This should allow the significant up-front costs to be recovered from users over time, consistent with the recovery of other capital expenditure.

PIAC agrees it is appropriate costs of ongoing compliance should be recovered from users.

It is not clear WaterNSW has undertaken a comprehensive assessment of options for implementing non-urban water metering reform. Without an assessment of the relative costs and benefits of different options and how they contribute to meeting the identified metering reform objectives it is difficult to assess the efficiency or affordability of aspects of the proposal.

PIAC recommends IPART require WaterNSW undertake an assessment of options for implementing non-urban metering reform, with specific consideration of the cost, benefit and risk of alternatives and how they contribute to the government's objectives for metering reform.

We address specific aspects of metering reform in responses to questions in the draft determination.

## Responses to questions in the draft determination

### Price structure for MDBA and BRC charges

1. **Whether stakeholders in the Murray, Murrumbidgee and Border valleys would prefer MDBA charges in these valleys to have:**
  - **An 80:20 fixed to variable ratio, or**
  - **A 40:60 ratio with a volatility allowance/RTP to compensate Water NSW for its increased revenue volatility risk, noting the trade-off associated with having a lower proportion of fixed charges and higher proportion of variable charges is the cost of a revenue volatility allowance.**

The structure of charges for MDBA and BRC, for both WaterNSW and WAMC, should be aligned with those for bulk water to optimise consistency and transparency. Pricing structures should also be consistent with the value of the entitlements and allocations they are attached to. There is scope to further differentiate between charges recovered from High Security entitlement holders and General Security entitlement holders by applying a different fixed to variable ratio to them. This would be in addition to the high security premium.

There are many valleys across the state where General Security entitlement holders rarely receive allocations that match their entitlements and face increasingly protracted periods where they may not receive any allocations at all. Stakeholder consultation has highlighted many water users face issues as a result of this. PIAC contends pricing structures must seek not only to reflect and recover costs, but work in support of the needs of users and communities that rely on water managed by WAMC and WaterNSW.

IPART should consider whether a differential ratio of fixed to variable charges, in conjunction with the existing High Security premiums, are a more effective and fairer means of sharing risk and recovering costs from users. This assessment should consider:

- A rural bulk water charging structure and price structures for MDBA and BRC (for both WAMC and WaterNSW) operating with a consistent approach to the ratio of fixed and variable charging. Simplifying the structure of charges and applying them more consistently increases transparency and appropriateness of price signals for users.
- Applying a differential ratio to High Security Entitlements compared to General Security Entitlements. For example, High Security Entitlement holders could retain an 80:20 fixed to variable ratio for all charges, while General Security Entitlement holders are subject to a 40:60 ratio for their charges, with the appropriate volatility allowance.
- Retaining the High security premium in conjunction with the differential ratio of fixed to variable charges. High Security and General security entitlements have different profiles: high security licences have a more fixed allocation that more closely match the fixed cost profile of WaterNSW and WAMC. General security licences are more likely to have a more variable allocation that does not align with the nature of WAMC and WaterNSW costs. Users with High security entitlements are also more capable of defraying the ongoing costs associated with those entitlements through their production, or through sale of allocations.
- Retaining a volatility allowance proportionate to the number of general security licences and the potential impact on revenue.

## **Non-urban metering reform**

### **3. Do you consider the indicative scheme proposed costs are affordable and what are the impacts of proposed bill increases on licence holders?**

PIAC questions the appropriateness and affordability of the non-urban metering scheme costs proposed by WaterNSW. We support IPART's assessment that a more comprehensive and detailed assessment is required.

As the draft outlines, it is not clear WaterNSW has undertaken a sufficiently comprehensive assessment of options for non-urban water metering reform. Without an assessment of the relative costs and benefits of different options and how they contribute to meeting the identified metering reform objectives it is difficult to assess the efficiency or affordability of aspects of the proposal. PIAC highlights the following questions and concerns relating to affordability and bill impacts:

- What are the indicative costs or range of costs for private meter holders to upgrade their metering and meet new standards? Are additional ongoing maintenance or service costs for users with private metering likely as a result of the scheme?
- What are the potential impacts of these costs on users with private metering? Analysis of impacts should consider these costs in the context of the range of other costs and considerations faced by users.
- What are the indicative costs and benefits of an option to install a new government meter where there is currently a private meter? Assessment of this option should look at the affordability and efficiency benefit of larger-scale procurement and rollout of meters. It should also examine the potential benefits of being able to defer upfront installation costs for users

by recovering those costs over the life of the asset as part of consolidated WaterNSW charges.

- What are the ongoing costs of non-telemetry metering compared to the long-term benefits of telemetry metering? Assessment should consider any potential limitations to telemetry metering, and whether accelerated or preferential rollout of telemetry metering delivers long term benefits that can help defray ongoing costs for users.
- What are the impacts of the NSW Government recovering all or part of the installation and implementation costs for upgraded and new government metering from users' bills over the lifetime of the meters, as part of consolidated WaterNSW charges. Assessment of this option should consider the impact of this on upfront affordability for users and ongoing affordability benefits for users with and without government meters.

#### **4. Will Water NSW's proposal for metering result in a consolidation of entitlements and fewer licence holders?**

It is possible WaterNSW's proposal will contribute to a consolidation of entitlements and impact the diversity and sustainability of users and communities.

The proposal involves significant increases in costs for all users. Users with private metering that requires upgrade and users currently without metering will be liable for substantial new upfront and ongoing costs. It is not apparent what these costs are likely to be. Users with government meters will also face increased costs. For all entitlement holders these costs come in conjunction with other cost increases, reduced water access reliability and increasing production value pressures. Particularly for smaller users, it is possible relatively small cost increases will make material changes to affordability and sustainability.

Smaller users are a crucial pillar of production diversity and community sustainability across the state. PIAC considers diversity in entitlement-holders should be a significant consideration in the wider impacts of the proposal.

#### **5. Will the metering policy result in some water users downsizing their works to avoid the 100mm meter threshold for the new policy?**

Excluding meters below 100mm from the new standards and requirements creates an incentive to downsize onsite metering below this threshold. Where the upfront and ongoing costs and burdens of metering is significant, it is possible these costs may become a material consideration for users, and encourage the downsizing of meters for those where it can be made practical.

#### **6. What are the impacts, if any, on customers and WaterNSW if customers with government owned meters choose the opt-out option?**

The proposal from WaterNSW seems to introduce unnecessary risks to the viability and affordability of metering services.

Based on the information provided by WaterNSW it is difficult to assess and quantify the impact of government metered customers opting to be privately metered. PIAC agrees with IPART it is not clear if the option to opt-out is intended to be part of the wider implementation of competition

in the installation and operation of metering and metering services. PIAC strongly disagrees with such an approach being pursued, as outlined in response to question 7.

In the absence of an ability to opt-in, an option to opt-out as part of the measures proposed by WaterNSW could lead to higher costs for remaining customers with government meters, and endanger the efficiency and viability of WaterNSW metering service provision. The impact of allowing government metered customers to opt out should be further considered as part of a comprehensive and transparent assessment of the costs and benefits of alternative means of implementing metering reform.

**7. If there are other providers who can provide the service, would there be an economic case to not set a regulated price for the MSC?**

PIAC does not support metering service provision by other entities and does not support deregulation of pricing for metering service charges in isolation. Allowing alternative providers should only be considered as part of a comprehensive and transparent assessment of alternative means of implementing metering reform, and only allowed where it contributes to a demonstrated benefit in line with government objectives for reform.

PIAC highlights the rollout of advanced residential electricity metering as an illustration of the risks of pursuing competitive metering. The introduction of competition in the provision of residential electricity metering in NSW, together with unregulated pricing of metering services has led to a slow, inconsistent and inefficient rollout and failed to deliver any of the intended reform objectives.

Competition in metering services has left costs and efficiency of metering services opaque, and resulted in narrower and poorer service provision that is undermining the ability to realise wider consumer and systemic benefits. These failures are currently the subject of a comprehensive review process which is considering complete reversal of the reforms less than 5 years after implementation.

Non-urban metering reforms are an urgent component of a wider response to serious failures in transparency, consistency and compliance in the management of water systems and operations. If the failures of residential electricity metering rollout are repeated in non-urban water metering, a similar outcome would undermine the intent of the reforms, and confidence in water management.

**9. If we do set a regulated maximum price for metering where there are alternative providers, what should we consider to ensure we support efficient outcomes in these situations?**

Alternative providers should not be considered at this stage. Allowing alternative providers should only be considered as part of a comprehensive and transparent assessment of alternative means of implementing metering reform, and allowed where it contributes to an articulated benefit.

**10. What would be the implications for customers, water users and Water NSW if we don't set regulated prices for the MSC for government owned meters.**

PIAC recommends IPART set regulated processes for the MSC of government owned meters.

**11. What are your views on WaterNSW's proposed costs and our initial assessment of these costs?**

IPART's assessment of WaterNSW's costs appears reasonable. As outlined in our response to question 3, it is difficult to assess the affordability or efficiency of the costs proposed by WaterNSW. The proposed costs are significant for many users. They relate to a reform implementation proposal that does not appear to have been assessed against alternatives to determine whether it represents the most efficient or effective means of achieving the government's objectives. Further, the proposal and related costs have been proposed without sufficient engagement with users, stakeholders and the community to ensure they accord with community preferences.

PIAC supports IPART's assessment that WaterNSW and the NSW Government should bear the costs and risk associated with the metering reforms implementation until a determination of affordable, efficient costs and ongoing cost shares supported by users and the community can be determined. IPART should require WaterNSW to undertake a transparent assessment of alternative means of implementing metering reform as part of this process. This should help ensure incurred costs are efficient, affordable and in line with community preferences.

**12. Should scheme management charges for non-urban metering reform apply on a per licence basis (as proposed by WaterNSW)?**

PIAC supports a per-licence basis for the scheme management charge. Non-urban metering reforms provide direct benefits to all licence holders. Considering the relatively small charge proposed, it is reasonable this charge applies to all licence holders. However, it would be appropriate for the most efficient and appropriate recovery of scheme management costs to be determined subject to comprehensive assessment of alternative means of implementing metering reform.

**13. Should the costs associated with installing telemetry and non-telemetry meters be the same?**

Relative installation costs of telemetry and non-telemetry meters should be informed by their contribution to the long-term objectives of non-urban metering reform. It should also specifically consider minimising costs on smaller users, the accuracy and auditability of water take information, and the practicality of metering requirements.

It is not clear why telemetry and non-telemetry metering installation costs are equivalent and why, if telemetry metering is preferred, the option for non-telemetry metering is retained.

PIAC supports considering both upfront and ongoing costs and benefits of each metering type in determining what is charged for installation. Long term, telemetry meters will likely be preferable as they maximise the timely access to metering data and are likely to involve less ongoing costs

in reading and downloading data. As a result, they should facilitate a wider range of benefits, with less ongoing cost impacts.

IPART should direct WaterNSW to undertake a detailed assessment of these relative costs and benefits as part of a comprehensive evaluation of alternative implementation approaches. This assessment should determine what, if any, are the long-term benefits of telemetry metering and how these contribute to the objectives of metering reform. The relative charges for different metering options, and whether a non-telemetry option should be retained, should be determined subject to this analysis.

**15. Do you consider WaterNSW’s proposal will effectively achieve the Government’s policy objectives for metering reform?**

PIAC is concerned the approach proposed by WaterNSW is not an effective or efficient means of achieving the Government’s policy objectives for metering reform. It is not clear how the various aspects of the proposal have been shaped by the objectives of reform, and how the proposals have been assessed against alternative approaches. IPART should require WaterNSW to undertake an assessment of their proposal, alongside alternatives, and demonstrate how it contributes to the Government’s objectives for metering reform.

**16. What are potential impacts on the implementation of metering reform if WaterNSW’s proposal does not meet the metering policy objectives?**

Failure to meet the objectives of metering reform is a material risk to the sustainability and effectiveness of water management in NSW.

The Matthews Report has highlighted systemic failure of transparency and compliance in water take that has destroyed trust in water management and undermined the ability to manage water resources efficiently and sustainably. Both the ACCC report on Murray-Darling Basin water Markets, and the Productivity Commission’s draft report on National Water Reform have outlined critical issues with availability, transparency and monitoring of water usage. The NSW Government’s new non-urban metering regulations, and the development of metering reform objectives, are a crucial response to address these issues.

Failure to meet the objectives of metering reform would perpetuate a lack of trust in water management for users and the wider community. It could:

- add material costs to users that are already struggling to adapt to changes in the relative availability and costs of water,
- contribute to significant changes in the sustainability of operations, particularly for many small users, and
- could undermine the ability to develop more efficient, sustainable and resilient water usage and management practices, and hence risk the viability of water resources and their surrounding communities and eco-systems.

PIAC shares IPART’s concerns with the proposal from WaterNSW and the potential impact upon the water sector and affected communities. We encourage IPART to undertake a detailed

assessment of alternative structures for implementing metering reform that can address these concerns by better sharing risks and costs.