



**public interest**  
ADVOCACY CENTRE

## **Review of WaterNSW's Rural Bulk Water Prices. From July 2021: Issues Paper**

**16 October 2020**

## 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 IPART's issues paper (the paper) commencing its review of WaterNSW's rural bulk water prices from July 2021.

The paper highlights a number of issues which PIAC considers crucial to the efficiency and sustainability of water services in rural NSW. We highlight these issues below, and will respond directly to a number of questions from the paper which we regard as of key relevance.

## Determination period

WaterNSW requested a 1 year determination period and only provided detailed forecasts on this basis. PIAC does not consider that WaterNSW has presented sufficient justification for a 1 year determination. As detailed in the initial stage of this review, we highlight the following:

- WaterNSW has had the opportunity to engage with stakeholders for three years and has not done so sufficiently. The need for stakeholder consultation and the key areas requiring stakeholder input are well established, with the determination timeframes known well in advance. WaterNSW has not justified why it has not engaged with stakeholders over the past three years and there is no evidence a further year will make substantive engagement any more possible or likely.
- The areas WaterNSW highlights as requiring more detailed engagement are unlikely to be materially changed as a result of stakeholder input. WaterNSW has cited long-term supply needs as requiring substantive engagement. However, PIAC notes the NSW Government has already made key decisions regarding supply expansions and the expenditure associated with these is flagged in this proposal. We address this further below.
- Alignment of determination periods will not be achieved even if WaterNSW is allowed a single year period from July 2021. Considering that further changes are required regardless, PIAC considers it less disruptive to continue with aligned periods for rural bulk water and WAMC, and adjust the period for the Broken Hill pipeline at a later date if this is deemed to be preferable.

We recommend that IPART proceed with a 4 year determination period.

## Stakeholder Engagement

PIAC strongly supports the central role of stakeholder and community engagement in determining and responding to the interests and preferences of the community. WaterNSW's long term investment decisions, operational focus and pricing proposals must align with the interests of the community their operations impact upon. Ongoing, meaningful stakeholder engagement processes are key to this. Like other State Owned Corporations (SOCs), WaterNSW has improved the scope of their engagement with the creation of Customer Advisory Groups (CAGs) across the state. However, the WaterNSW proposal demonstrates the limits of engagement through these groups.

Specifically, PIAC notes the following:

- These groups are mostly comprised of representatives of direct customers, such as irrigators, councils and environmental water holders<sup>1</sup> only. While this representation is a priority, there has not been a structure for transparent, meaningful engagement with the wider community in each of these catchment areas. Where the investments and operations of WaterNSW impact the entire community, it is crucial they are involved in long term decision making.
- There has not been a wider, deliberative process of engagement run alongside these CAGs that includes a representative mix of all members of the community. PIAC cites the deliberative engagement processes undertaken by Essential Energy and Jemena Gas Networks, as relevant examples of direct regional community consultation undertaken alongside ongoing stakeholder council consultation.
- Engagement has been narrowly focussed upon issues determined by WaterNSW, regional planning and regulatory proposal processes. Further, submissions to this process to date<sup>2</sup>, as well as a survey of relevant CAG minutes, indicates that WaterNSW's engagement was more akin to 'notification and information' than consultation. This suggests a 'tick-the-box' approach to engagement rather than a commitment to use meaningful engagement to discover and embed community preferences and interests into WaterNSW planning and operations.

PIAC does not consider the engagement undertaken by WaterNSW to date to be a sufficient or appropriate support for the decisions taken in their proposal.

## Transparency and cost sharing

The Paper raises a number of questions in relation to the efficiency of investment costs incurred, and the efficiency and fairness of how those costs are shared between consumers and the NSW community. PIAC welcomes IPART's examination of these issues and considers them fundamental to ensuring the long term sustainability and efficiency of water across NSW catchments.

Decision making in relation to investment, long-term planning, service delivery and pricing must be transparent and based upon consistent principles. PIAC is concerned that WaterNSW's proposal includes a number of investment decisions that are not the result of objective assessment processes demonstrating established benefits over the alternatives. For instance, capital projects presented as 'drought related expenditure' have not undergone detailed, transparent assessment of costs and benefits relative to alternative measures. While these projects are proposed to be funded by the Commonwealth and NSW governments, they have potentially significant ongoing implications for WaterNSW customers and the communities around them.

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<sup>1</sup> Water NSW website, <https://www.waternsw.com.au/customer-service/service-and-help/groups>.

<sup>2</sup> NSW Irrigators Council, '[Submission: WaterNSW rural bulk water prices – length of determination](#)' August 2020, 5-6.

PIAC recommends that IPART undertake a closer examination of these projects and their ongoing costs and benefits as part of this proposal process.

Transparency must also extend to the sharing of costs, and decisions regarding how the consumer and community share of costs is determined. PIAC does not support systemic, under-recovery of costs from users who aren't facing financial hardship. Equally, it is not acceptable to obscure real costs to serve through ad-hoc tax-payer subsidies that do not seek to address disadvantage. Decisions for the wider community to subsidise the costs of any particular groups of users must be made transparently, and represent the expressed preference of the community.

PIAC is concerned that WaterNSW has made a number of proposals for costs to be under-recovered and subsidised by the NSW community, without a clear demonstration how the related decisions were made, that they support the long term interests, and represent the preferences, of consumers and the community.

## Responses to Issues Paper questions

### 6. How should WaterNSW manage its revenue volatility risk?

PIAC understands that there is a preference for mechanisms that mirror the practices of private entities in competitive markets, with volatility risk managed through the purchase of special products to insure against under recovery. The paper illustrates the weakness of insurance products when applied to the operations of the scale and type of WaterNSW in its management of rural bulk water. Specifically:

- These products incorporate a cost and profit margin for the insurer, which inflates the insurance costs that consumers (or taxpayers) must cover.
- Risk premia increases with level of risk. Where WaterNSW's bulk water operations are certain to involve periods of under-recovery due to constant fluctuations in water availability and sales, this locks in escalating costs.

We question whether this is the simplest and most effective approach in this case.

A simple mechanism allowing for the 'banking' of over-recovery within revenue periods could be implemented as an alternative. This may produce an incentive to over-estimate revenue requirements, to protect against the potential for under-recovery. However, it is possible to design the parameters of such a mechanism to ensure it operates only within a determination period, and ensures the return of any over-recovered revenue to consumers either within the period or at its conclusion as a rebate.

It may be more appropriate to recover more revenue through fixed charges considering the nature of the bulk water service provided by WaterNSW. We address this further in response to question 25.

Regardless of the approach taken, PIAC contends it is necessary to consider the WaterNSW charges and pricing in conjunction with the cost and pricing of the water delivered through its services. Within the Murray Darling Basin (MDB), water is priced and purchased through the water market. The prices set by this market more efficiently reflect supply volatility, and have

been demonstrated to provide an effective signal to users. If usage-based prices introduce excess volatility, complexity and inefficiency to WaterNSW operation, all options to address this complexity and inefficiency should be considered. This may include higher fixed charges.

### **9. Should governments bear all the costs of increasing water security and availability for licence holders?**

PIAC supports transparent cost sharing decisions based on agreed and consistently applied principles. It is important that these principles also relate to investment decision-making frameworks, in particular:

- Options for increased security and availability should be assessed transparently according to the risks they impose or mitigate, the costs they incur, and the benefits they realise. The preferred measures should be those which realise the most net benefit, with least ongoing risk to licence holders and the community. The risks and impacts of climate change should be a primary consideration in this regard.
- Costs directly attributable to increased water availability for licence holders should be borne by them, on the principles that they are both the 'impactors' and beneficiaries of that availability.
- Any costs borne by the NSW Government, on behalf of the NSW community, must be decided via transparent processes that reflect the expressed preferences of the community, and support the stated objectives of long term water planning.

PIAC recommends examining the costs incurred in relation to increased water security. Particular consideration should be given to whether the measures taken are the most efficient options, with the least long term risk. Similarly, attention should be paid to how decisions for the share of recovered costs have been made, and whether they accord with the established principles of water planning and represent the expressed preferences of the community.

### **10. Who should pay for future expenditure on major drought-related projects, including asset renewals and upgrades?**

PIAC is concerned by the characterisation of large-scale storage investments as 'drought-related costs'. We understand that drought related costs for water utilities include measures directly resulting from declared drought conditions, where drought refers to sustained a deficit of rainfall, a deficit of waterflow or a deficit of soil moisture. These measures include expenditure related to:

- increased maintenance reducing asset leakage or failure resulting from drought, or where drought makes such maintenance more economic.
- increased conservation measures made more urgent or more economic as a result of drought.
- increased information provision or customer assistance measures made necessary by drought conditions.
- Expenditure related to water trucking, purification or other measures to ensure that critical supply is maintained in drought circumstances.



- Expenditure related to urgent investment securing an existing supply, such as facilitating deeper water access from existing storages or pipelines between existing storages to improve access for catchments (particularly town water supplies) facing critical water failure.

PIAC recommends that a closer examination of expenditure undertaken by or on behalf of WaterNSW includes a rigorous assessment of what constitutes 'drought related expenditure', and whether these projects represent effective responses to drought. PIAC contends that several large dam projects are more accurately characterised as supply augmentation projects. Closer examination should involve assessment of:

- the impact of the proposed projects as drought response measures.
- the effectiveness, cost and benefit of the projects relative to alternatives that may deliver equivalent (or superior) drought response.
- the long term sustainability of the projects, with specific reference to the potential impacts and risks of climate change.

We understand that IPART does not have a formal role in assessing these projects, as the capital expenditure will be funded by the NSW and Commonwealth Governments. However, to the extent these projects have ongoing implications for the efficiencies and costs of WaterNSW users, and the NSW community, PIAC considers it important to determine the efficiency and appropriateness of this expenditure.

#### **11. Over what determination period should we set prices?**

PIAC supports proceeding with a 4 year determination period.

#### **14. We are required to set prices that recover WaterNSW's efficient costs in the MDB valleys. If efficient costs are increasing, how should costs be recovered over the determination period?**

PIAC does not support the WaterNSW proposal to under-recover costs in MDB valleys and recommends costs are fully recovered.

While many communities in MDB valleys have been heavily impacted by drought, this is now a likely and foreseeable event. Systemically under-recovering costs that are known, and deemed to be efficient, undermines sustainable water business management and in turn compromises good economic, social and environmental outcomes.

Supporting measures for drought-affected water users should be implemented transparently through government assistance measures such as rebates and grants, rather than ad-hoc internal subsidies.

PIAC recommends that IPART undertake close examination of costs being incurred on behalf of users in the MDB valleys to understand whether the NSW community is paying more than is efficient through any combination of taxes and/or water charges.

#### **15. How should we set prices in coastal valleys?**

Prices in coastal valleys must be reconsidered. It is not sustainable to continue to intentionally under-recover costs in these catchments.

The real value of water storage infrastructure in coastal valleys should be assessed according to actual demand for the water delivery services they provide. Reconsidering and potentially writing down the value of storage and delivery assets in these areas may be a more sustainable, efficient and fairer option than continuing to operate an effective subsidy for coastal valley users.

#### **16. What is the appropriate mix of fixed and usage charges?**

PIAC is generally supportive of charges that are based upon actual usage as an efficient means of ensuring those who use more water pay for its impact, and benefit most from the services provided commensurately. However, in this case there is merit in considering whether a higher proportion of fixed charges may be more appropriate. Specifically, PIAC notes:

- WaterNSW's costs are largely fixed, and in most cases do not vary materially according to usage. Recovering costs largely through usage charges creates revenue volatility that requires complex and increasingly costly arrangements to address. While there are a number of alternative mechanisms for addressing volatility, such as those noted our response to question 6, there are costs and complexity involved.
- Most customers who have their water delivered via WaterNSW's rural bulk water services, purchase this water through markets at prices which vary widely according to supply and demand. These costs are much more substantial than WaterNSW's charges and operate as strong signals regarding the availability of water and its scarcity. It is debateable whether any meaningful signal is provided by WaterNSW charges.

PIAC recommends that IPART examines cost recovery options for WaterNSW that more closely reflect the nature of WaterNSW's costs and what systemic efficiencies and cost savings may be incentivised.

PIAC understands that higher fixed charges will have potential cost implications for water users in times of reduced or zero allocations. The impact of this should be directly considered against the potential for lower overall costs and higher efficiencies. In periods of no allocation, the NSW Government could include rebates for fixed WaterNSW charges as a drought support measure.