

**Sydney Water Prices**  
**IPRT submission, Michael Mobbs**

[REDACTED]  
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Owners of properties with rain tanks, detention and retention tanks – anything that keeps rain water on site – may claim reduced stormwater charges in their Sydney Water bills if the NSW Independent Pricing Tribunal’s draft prices are finalised.

The Tribunal’s draft new price is:

“For households in Sydney Water’s stormwater area, **annual stormwater service charges** would decrease from \$86.02 in 2015-16 to \$74.40 in 2016-17 (without inflation). For residents in apartments, annual stormwater service charges would decrease from \$31.55 in 2015-16 to \$23.61 in 2016-17.

We have introduced a new category of **low impact houses** for residential stormwater customers who demonstrate that their property makes a relatively small contribution to stormwater load. These customers would be charged \$23.61 in 2016-17, the same rate as apartments, and a reduction from \$86.02 in 2015-16.

This would accommodate, for example, a situation where a customer invests in significant on-site water retention facilities. Many stakeholders support this change to stormwater prices. Sydney Water currently requires non-residential customers to apply for the low impact discount: there is a simple two page form, which is followed by Sydney Water’s assessment (at Sydney Water’s cost). We consider that this process should be extended to residential houses. ” (1)

Submissions on the proposal were due Monday 18 April 2016 (2).

The tribunal’s decision is a good start to ending a tragic pricing system which maintains a highly damaging monopoly abuse of power over property owners.

There should be a \$nil price for properties from which no stormwater leaves.

Since it began setting water prices in 1992 the tribunal has directly approved the huge pollution of Sydney Harbour and the city’s waterways.

For over 20 years the Tribunal has approved much of the annual 500 billion litres of stormwater pollution of Sydney Harbour and the Pacific Ocean.

The 500 billion litres is the same amount of water that's in Sydney Harbour.

The pricing tribunal summed up its 2016 pricing approach thus:

“We reviewed Sydney Water’s capital and operating expenditure proposals (the consultant report can be found here). We then set prices to raise the revenue Sydney Water requires to recover its prudent and efficient costs.” Page 1:

fact\_sheet\_-\_sydney\_water\_price\_review\_-\_residential\_customers\_-\_march\_2016.pdf

Notice in the summary the absence of any consideration of, or evidence about, the stormwater pollution?

In the full draft report the closest the tribunal gets to considering stormwater pollution and other externalities is this;

“The NSW Government is responsible for determining any negative environmental impacts associated with Sydney Water’s activities, and for imposing standards or requirements on Sydney Water to address these impacts.”

Sydney Water is NSW’s 20<sup>th</sup> biggest climate polluter – a huge amount of energy is required to clean and pump water and sewage. No mention of this.

And not one word about stormwater pollution. (See, **11.7 Implications for the environment p193**)

This passing of the buck to the state government was not what was intended by the then Premier Nick Greiner when he explained Parliament understood the bill to required the tribunal to consider and put a price on ‘externalities’ such as pollution (see below).

The pricing decision, in my view, may be unlawful and could be overturned if challenged in legal proceedings.

Before turning to explore the basis of a legal challenge, it’s useful to ask, using the Tribunal’s criteria of “prudent and efficient costs’ where is the evidence to support the decision if we confine our analysis to the tribunal’s criteria?

There is no evidence in the draft decision on these issues:

1. What are the 'efficient' costs the tribunal identified Sydney Water achieving for a property from which no stormwater leaves, in particular one from which no stormwater has left in ten to 20 or more years? Sydney Water makes no contribution to that result nor does charging a property owner do other than send a punitive pricing signal.
2. Fixed charges are not paid for a property which is not connected to mains water or sewer. Why then are fixed charges paid for a property which is also not connected to either a council or Sydney Water's stormwater system?
3. Where is the financial or hydraulic evidence that a house which retains all its stormwater has any quantifiable impact on the depreciation costs of the stormwater infrastructure of a council or Sydney Water, or on the costs of maintaining it?

Without evidence to support it the pricing decision is also open to legal challenge.

Let's see what was said in the Second Reading speech for the tribunal's bill. This speech is typically referred to by a court in any judicial challenge to a tribunal's decision where the scope of a tribunal's powers and duties is being reviewed. (Tribunal decisions, like those of most other such bodies, is amenable to judicial review.) The bill was read in 1992 by the then Premier, Nick Greiner:

"The purpose of this bill is to establish a government pricing tribunal to determine the maximum price for monopoly services supplied by nominated government agencies and to report on the pricing policies of those agencies. Its principal aim is to ensure that the interests of the citizens of New South Wales, both as consumers and taxpayers, are protected and are seen to be properly protected. Many government businesses in New South Wales are monopoly suppliers of services, notably, electricity, water and transport. As a result, these agencies are not subject to competitive forces and are able to set their prices without reference to the prices of substitutes for their services. In the absence of regulation these monopolies can charge prices which are higher or lower than they would be if set in a competitive market.

...

The pricing tribunal established by this bill with power to review and determine prices charged by monopolies will ensure that monopolies do not abuse the power which they have by being the sole supplier of a good or service. The tribunal will provide a proxy of conditions which would operate were the monopoly in a competitive market . . . Its approach would encourage efficiency, equity or the appropriate allocation of resources either in the short term or the long term. The introduction of a price formula and

nothing more would encourage a mindset within authorities and the Government whereby government charges are simply allowed to increase by the consumer price index each year.” (Second Reading Speech, Premier Nick Greiner, Independent Pricing and Regulatory Tribunal Bill: <http://www.parliament.nsw.gov.au/Prod/Parlment/HansArt.nsf/fe74bade7b77456dc a256d100026cf44/ca256d11000bd3aa4a25646600184145?OpenDocument>)

The Premier went on to make clear that the environmental impact of government monopolies is central to the Tribunal’s decision-making – note my bold type:

‘The tribunal will, therefore, be constrained by strict efficiency and cost issues but will take a broader range of matters into account when making determinations and recommendations. This will ensure that environmental and social issues form part of the equation and the tribunal will need to weigh these matters against strict cost-related factors. **Honourable members would be aware that any reasonable analysis of the price or pricing structure of monopoly services, such as electricity, water and sewerage, must take into account the externalities relevant to the supply of the services. The cost of avoiding or minimising any environmental damage which might occur as a result of the supply of monopoly services should be taken into account when determining the appropriate price to be charged. This action will promote sound environmental practices and decisions as well as determining economically appropriate prices for the benefit of the people of this State. It will be a further factor operating to discourage and minimise environmental degradation.**“

Parliament’s Second Reading Speech would be read by a court in any judicial challenge to the Tribunal’s decision where the scope of its powers and duties was being reviewed. (Tribunal decisions, like those of most other such bodies, are amenable to judicial review.)

At the heart of any litigation would be the failure of the Tribunal when determining water prices to do what the Premier said (above) the legislation intended it to do:

**“any reasonable analysis of the price or pricing structure of monopoly services, such as electricity, water and sewerage, must take into account the externalities relevant to the supply of the services”.** (3)

The Tribunal doesn’t take into account at all the pollution – an externality - it causes as a direct result of its stormwater prices. The pollution is obvious whenever it rains as rivers of wasted, polluting stormwater run down millions of street gutters in Sydney. It runs there because the Tribunal’s prices reward, maintain and fund the stormwater systems.

A NSW Parliament publication says this of the pollution:

“Stormwater is the most significant contemporary source of heavy metal contamination in Sydney Harbour. It has been estimated that Sydney Harbour receives an average annual loading of arsenic, cadmium, chromium, copper, nickel, lead and zinc of 0.8, 0.5, 1.7, 3.2, 1.1, 3.6 and 17.7 tonnes respectively (28.6 tonnes in total). Copper concentrations in stormwater almost always exceed the guidelines, zinc concentrations frequently exceed guidelines and arsenic, chromium and lead concentrations exceed guidelines on occasion. Nickel concentrations never exceed guidelines. [6.1.2]

Researchers have modelled the length of time it would take for heavy metal concentrations to decrease to two times pre-anthropogenic concentrations based on recent trends. The time taken for particular metals to decline to two times background concentrations ranged from 2 to 92 years. However, this is optimistic given sediment concentrations cannot decrease below the levels found in stormwater entering the Harbour, which is up to 10-20 times background levels in some locations. [6.1.3] ”

[https://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/14EBAE23F46BE9B2CA257E0A00188305/\\$File/Pollution%20in%20Sydney%20Harbour.pdf](https://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/14EBAE23F46BE9B2CA257E0A00188305/$File/Pollution%20in%20Sydney%20Harbour.pdf)

This readily available research shows that each year a toxic mix of over 28 tonnes of arsenic, mercury, cadmium, lead and other heavy metals pour into Sydney’s waters while Sydney Water and councils profit from systems causing it.

When fixing prices the Tribunal must consider 12 criteria, but the draft decision seems to completely ignore these three (in section 15):

“(f) the need to maintain ecologically sustainable development (within the meaning of section 6 of the *Protection of the Environment Administration Act 1991* ) by appropriate [pricing policies](#) that take account of all the feasible options available to protect the environment,

. . .

(i) the need to promote competition in the supply of the [services](#) concerned,

(j) considerations of demand management (including levels of demand) and least cost planning, . . .”

[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/iparta1992426/s15.html](http://www.austlii.edu.au/au/legis/nsw/consol_act/iparta1992426/s15.html)

Section 6 of the Protection of the Environment Administration Act lies at the heart of NSW pollution legislation and has been directly imported into the tribunal's Act as something it must consider when setting prices. The key words in it which decision-makers such as the tribunal must be guided by are;

“ . . . if there are threats of serious or irreversible [environmental](#) damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent [environmental](#) degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the [environment](#), and
- (ii) an assessment of the risk-weighted consequences of various options, “

[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/poteaa1991485/s6.html](http://www.austlii.edu.au/au/legis/nsw/consol_act/poteaa1991485/s6.html)

The method of applying the precautionary principle in section 6 is set out in the leading judgement of *Telstra v Hornsby Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133. The precautionary measures are triggered by the satisfaction of two conditions precedent:

- a threat of serious or irreversible environmental damage; and
- scientific uncertainty as to the nature and scope of the threat of environmental damage.

The Tribunal's draft price does not mention either the pollution or the threat of serious or irreversible harm to Sydney Harbour's waters. The decision explicitly and implicitly assumes that the current infrastructure:

- needs no competition,
- is ecologically and financially sustainable,
- will remain,
- is the least, or lowest cost option, and
- the pollution it causes must and will continue.

Back to the rain and more evidence of the pollution the tribunal approves:

“Harbour sediments contain a variety of contaminants, the worst of which are dioxins, heavy metals and organochlorine pesticides (e.g. DDT). Except for a small area near the entrance, all sediments exceed guidelines for at least one contaminant. The most polluted sediments are found in Homebush Bay, Hen & Chicken Bay, Iron Cove, Rozelle Bay, Blackwattle Bay and Long Bay.

Microplastics (fragments smaller than 5mm) are an emerging problem. Early studies have found alarming levels. While the Government is working towards eliminating one source – microbeads in products like shampoo – it appears that the largest source are clothing fibres from washing machines.

Most sediment contaminants entered the Harbour prior to 1970, when industrial practices were poorly regulated. Today, three primary sources pollute the waters and sediments of the Harbour: stormwater, sewage overflows and leachate from contaminated reclaimed land.

### Microplastics

The term microplastics was first coined in 2004 as researchers attempted to account for all the plastic in the ocean. Microplastics are tiny plastic fragments, fibres and granules generally smaller than 5mm in diameter. A wide-ranging study into microplastics published in 2011 concluded that microplastic particles in the marine environment are mainly derived from sewage via washing clothes, rather than fragmentation of larger pieces or cleaning products. [7.1]

In 2014, researchers from the [Sydney Institute of Marine Science](#) found “alarming” levels of microplastic pollution in Sydney Harbour. Sediment samples taken at 27 sites across the Harbour found concentrations of microplastics ranged from 0-10 to a high of 61-100 particles per 100ml of sediment in Middle Harbour. In August 2014, Rob Stokes, the NSW Minister for the Environment, announced that he had convened a working group to work towards phasing out microbeads by 2016 through voluntary means. Rob Stokes also called for a national ban on the sale and production of shampoos and other products containing microbeads. “

<https://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/PollutioninSydneyHarbour:sewage,toxicchemicalsandmicroplastics>

The best competitors to councils and the Sydney Waters of our cities are property owners who may choose to invest in providing their non-polluting stormwater systems on their own properties. The tribunal is blind to them and to the potential they provide for disrupting the monopoly services they are wedded to supporting.

True it is, that no legislation ever rises above the level of its administration.

By presiding over the massive pollution of Sydney harbour and the ocean the Tribunal dwells at the bottom, far below the dreams held by so many associated with its creation.

(1) The tribunal's decision on stormwater:

#### **4 Draft stormwater prices**

Only some customers fall within Sydney Water's stormwater area and therefore pay stormwater charges to Sydney Water.<sup>1</sup> Local councils, rather than Sydney Water, are the main providers of stormwater services in the Sydney area.

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<sup>a</sup> 2015-16 prices were not available when Sydney Water finalised its pricing proposal. The prices for 2015-16 have been updated to reflect actual inflation and prices.

According to Sydney Water, this area covers 30 Local Government areas, and generally includes the central business district and inner west of Sydney.



It provides stormwater drainage services to around 548,000 residential and non-residential properties (2015-16), which we estimate to represent around 28.6% of the 1.9 million properties that it supplies water services to (2015-16). Sydney water pricing proposal to IPART, June 2015, p 52 and Sydney water pricing proposal to IPART - Appendices, June 2015, p 48.

(2) Submissions may be made here:

[http://www.ipart.nsw.gov.au/Home/For\\_Consumers/Having\\_your\\_say/Lodge\\_a\\_submission?versionId=58179a85-0355-4ee8-8ad8-780bf01da3bb&name=Draft%20Report%20-%20Review%20of%20prices%20for%20Sydney%20Water%20Corporation%20-%20From%201%20July%202016%20to%2030%20June%202020](http://www.ipart.nsw.gov.au/Home/For_Consumers/Having_your_say/Lodge_a_submission?versionId=58179a85-0355-4ee8-8ad8-780bf01da3bb&name=Draft%20Report%20-%20Review%20of%20prices%20for%20Sydney%20Water%20Corporation%20-%20From%201%20July%202016%20to%2030%20June%202020)

(3) Thanks to Tom Parry and Joan McClintock, founding Chair and Member, respectively, Premier Greiner who created the tribunal, and hat tip to that mountain of Australian public sector thinking, Gary Sturgess, the then Premier's Cabinet Director. Long shadows you cast.