

26 March 2014



The Officer in Charge
Urban Water Regulation Review
NSW Department of Finance and Services
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

By email: urbanwaterreview@finance.nsw.gov.au

Dear Sir/Madam

Submission to Urban Water Regulation Review Position Paper

The Public Interest Advocacy Centre (PIAC) thanks the NSW Department of Finance and Services for the opportunity to provide comment on the NSW Government's *Urban Water Regulation Review Position Paper* (the Position Paper). PIAC's comments in this submission are confined to the proposed retailer of last resort (RoLR) and operator of last resort (OoLR) arrangements. PIAC supports RoLR and OoLR arrangements that seek to ensure that consumers do not suffer an interruption to their water supply and that the costs of a water provider failing are not born by low-income and vulnerable consumers.

By way of background, PIAC is an independent, non-profit law and policy organisation. PIAC works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. PIAC operates an Energy and Water Consumers' Advocacy Program (EWCAP), established in 1998, which develops policy and advocates in the interests of low-income and other residential consumers in NSW energy and water markets. PIAC receives funding from Trade and Investment NSW to carry out its work in this area.

Water industry competition and ensuring supply of essential services

Under the *Water Industry Competition Act 2006* (NSW) (WIC Act), companies can apply for licences to provide water services to consumers, including infrastructure and retail services. RoLR and OoLR arrangements are designed to ensure that in the event of the failure of a WIC Act licensee—for example, due to insolvency—consumers do not lose their supply.

The Position Paper states that the NSW Government has examined the RoLR/OoLR arrangements in the WIC Act 'and found that the regime fails to adequately provide for managing the failure of an operator, and has limited provisions for the failure of retailers'.¹ PIAC takes the view that it is unreasonable to expect consumers to carry out 'due diligence' on the private water provider in an area in which they may be considering purchasing property. In addition, the discussion Position Paper identifies the risks to public health and the environment that exist if water services are interrupted in a particular area.

¹ Department of Finance and Services, 2014, *Urban Water Regulation Review Position Paper*, 49.

Accordingly, it is vital that effective RoLR/OoLR arrangements exist so that in the event of a WIC licensee failure, essential water services 'can continue to be provided to customers and public health and safety protected'.²

PIAC, therefore, supports Recommendation 38 in the Position Paper. That recommendation states that a new part should be inserted into the WIC Act to give RoLR/OoLR arrangements the objective of 'ensuring continuity of the supply of essential services, and, in doing so, protecting public health, and the environment and customers, particularly small retail customers'.³

Cost recovery for RoLR events

A key issue in planning for a RoLR/OoLR event is how the costs of the event are recovered. In PIAC's view, these costs should be recovered as much as possible from the failed WIC licensee. Where this is not possible, PIAC supports the proposal that a cap be placed on the costs that are recovered from individual consumers. In addition, PIAC argues that low-income and vulnerable consumers should be exempt from paying these costs.

For a RoLR event, the Position Paper proposes that costs will initially be sought from 'the WIC licensee that has caused the RoLR event'.⁴ The Position Paper argues that placing this liability on retailers would discourage them from refusing to provide supply to small customers for reasons other than insolvency (such as the unprofitability of the scheme), and thereby triggering a RoLR event.⁵

Where cost recovery from the failed licensee is not possible, the Position Paper argues that cost should be recovered from the customers of the failed retailer through a RoLR fee. This fee would be determined by the responsible Minister, on the recommendation of the Independent Pricing and Regulatory Tribunal (IPART).⁶ The Position Paper argues that customers of the failed retailer should be subject to these charges on the basis that they experienced some benefit from the third-party service provision, such as 'lower costs, better services, or earlier access to land for development'.⁷ However, the Position Paper notes that because small retail customers are limited in their ability to manage risk, there should be a limit on the amount of the fee. IPART's recommendation would, therefore, include a cap on the RoLR fee set before the RoLR event.⁸

PIAC supports the principle of a cap on RoLR fees. PIAC believes that few residential consumers would consider the risk of their third party water retailer failing and the costs that may be incurred as a result. PIAC further takes the view that because water is an essential service, the NSW Government should make arrangements on the basis that none will.

In addition, PIAC notes that even a modest RoLR fee may have a significant impact on low-income and vulnerable consumers' ability to afford essential services. Accordingly, PIAC does not consider that these consumers should be subject to RoLR fees.

Likewise, PIAC does not consider that low-income and vulnerable consumers should be subject to paying a fee to recover the cost of an OoLR event. The Position Paper proposes that costs that are not recovered from the failed WIC Act-licenced operator be covered by other water utilities, based on a formula developed by IPART. Utilities would, in turn, recover these costs

² Ibid.

³ Ibid 50.

⁴ Ibid 51.

⁵ Ibid.

⁶ Ibid 52.

⁷ Ibid.

⁸ Ibid.

from their entire customer base.⁹ Once again, PIAC submits that low-income and vulnerable consumers are not in a position to bear this impost.

PIAC, therefore, recommends that consumers who have a concession card not be liable to pay costs associated with a RoLR/OoLR event. This exclusion should apply to consumers who hold one of the following concession cards:

- a Pensioner Concession Card from the Department of Human Services or the Department of Veterans' Affairs;
- a Health Care Card from the Department of Human Services; or
- a Gold Card from the Department of Veterans Affairs.

Recommendation 1

PIAC recommends consumers with the following concession cards be exempt from paying costs associated with a RoLR/OoLR event:

- *a Pensioner Concession Card from the Department of Human Services or the Department of Veterans' Affairs;*
- *a Health Care Card from the Department of Human Services; or*
- *a Gold Card from the Department of Veterans Affairs.*

Once again, PIAC thanks the NSW Department of Finance and Services for the opportunity to provide comment on the Position Paper. If you would like any further information, please do not hesitate to contact me, or Oliver Derum, EWCAP's Senior Policy Officer, on 02 8898 6518, or oderum@piac.asn.au.

Yours sincerely



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⁹ Ibid 57.