



public interest
ADVOCACY CENTRE

Town Water Risk Reduction Program Draft Roadmap

06 September 2021

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

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:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

Contact

Douglas McCloskey
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: (02) 8898 6534

E: dmccloskey@piac.asn.au

Website: www.piac.asn.au



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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

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Town Water Risk Reduction Program Draft Roadmap (the Draft Roadmap), and supports the NSW Department of Planning, Industry and Environment's (DPIE) process to reform the framework for delivering secure and sustainable water services across regional NSW.

In September 2020 the NSW Auditor General produced a report on the performance audit conducted of DPIE's regulation of town water in regional NSW (the report). This report included a series of findings detailing issues with an inconsistent, opaque, inefficient and dysfunctional framework of governance, regulation and operational support for local water utilities in regional NSW. PIAC supports the report's findings and recommendations for immediate reform.

The Draft Roadmap seeks to address a number of the findings and recommendations identified by the Auditor General. PIAC broadly supports the intent, improvement actions, and reform outlined in the Draft Roadmap. It is an important and welcome step in creating a more consistent, robust, transparent and sustainable framework for maintaining water services in regional NSW. There is further scope to make improvements to the effectiveness of the regulatory framework and arrangements which we outline below, in response to specific aspects of the Draft Roadmap.

Legislative reform options

PIAC recommends consideration of legislative options to support improvements to the regulatory and governance framework for water services in regional NSW. We understand that the Town Water Risk Reduction Program and the Draft Roadmap have prioritised practical measures that can be implemented in the near-term, without requiring longer processes of legislative reform.

Prioritising timely measures that can be implemented in support of the identified objectives is appropriate, and PIAC agrees with this focus. This prioritisation does not preclude a parallel process assessing where legislative measures would support identified objectives and ensure that better outcomes are achieved and embedded over the longer term. This is in line with the Auditor General's findings and consistent with feedback provided to DPIE by stakeholders as part of the Town Water Risk Reduction Program engagement process. The recent white Paper produced by the NSW Productivity Commission also included recommendation 5.3¹ highlighting the need to identify more permanent governance measures to address fragmentation of water responsibilities in NSW.

Opportunities for alignment with IPART regulatory framework for water

IPART is currently undertaking a review of the regulatory framework governing those entities it has responsibility for². This process has identified three key focus areas that are relevant to the process currently being undertaken through the Town Water Risk Reduction Program, including:

- Lifting performance
- Promoting a customer focus

¹ NSW Productivity Commission ['White paper 2021: Rebooting the economy'](#) 31 May 2021p196

² IPART website [How we regulate the water businesses](#)

- Promoting innovation

PIAC considers it crucial that regulatory frameworks governing water services across NSW are aligned and delivered according to consistent objectives and principles. While the regulatory framework overseen by IPART is different to that governing Local Water Utilities (LWU's), there is opportunity for alignment between the objectives and principles of both. NSW citizens and communities should be guaranteed similar quality, equity, sustainability, efficiency, security, and affordability regardless of the business model of the utility delivering their essential water services, or the regulatory framework they are governed by. The Town Water Risk Reduction Program, and further reform identified through it, should seek to ensure that LWUs across NSW are capable of delivering outcomes in the long-term interests of consumers and community, equivalent to those expected of urban water utilities.

Regulatory Objectives and Principles

PIAC strongly supports the implementation of agreed objectives and principles to inform and guide the regulation of LWUs. Explicit, transparent and enduring objectives are crucial to improving regulatory consistency, clarity and effectiveness. We welcome the intention to continue to test and develop them through consultation and engagement with stakeholders and the community.

An overarching regulatory objective should also be developed through a structured engagement process including LWU, Government, Industry and community stakeholders. The resulting objective should be enshrined in legislation, or given similar formal status to ensure it impacts meaningfully on regulation, processes and decisions. PIAC highlights the National Energy Objective (NEO) informing the regulation and operation of the National Energy Market, as an example of how an objective can operate and bring about more consistent and effective regulatory frameworks. A similarly structured objective applied to the regulation of LWUs could set an objective for regulation, for example, 'to promote the long-term interests of communities and their equitable and affordable access to safe, healthy, sustainable, reliable and secure water services, and manage the risks associated with a changing climate'.

The objectives of the LWU sector could be framed to refer to this overarching objective shared with Government Departments and agencies, in the same way that National Energy Market bodies all act in reference to the NEO. This approach would enable further alignment with the objectives of NSW Water strategy and planning, and the objectives of National Water Reform as outlined in the National Productivity Commissions Draft Report on its review of Water Reform³

Strategic Planning

PIAC supports the scope of the key changes to the Department's strategic planning regulatory function, outlined in the Draft Roadmap.

³ Productivity Commission [National Water Reform 2020: Draft Report](#) 11 February 2021 pp44-48

Outcomes

Identifying 'what success looks like' is a welcome focus on outcomes. PIAC recommends the Roadmap identify objective measures that can be used to monitor progress towards these success 'outcomes' and inform further improvements.

Planned actions

The forward plan of changes to the Department's strategic planning functions, identified in the Roadmap, is a transparent basis for accountability in the reform process. Many of the outlined improvements are concrete measures with explicit action commitments and intended delivery timeframes. This is vital for effective implementation of the Roadmap and the ongoing improvement of the regulatory framework governing regional town water.

The intention to improve enablers assisting local water utilities does not currently have explicit and monitorable framing. PIAC recommend DPIE reframes these actions in the following ways:

- Add an action to structurally separate regulatory functions from enabling and supporting functions undertaken by DPIE, to ensure regulatory and oversight functions are robust, transparent, predictable, and consistent.
- Develop the details of the action 'investigating options to enhance technical support for utilities'. This action should include:
 - An explicit intention to create a framework for consistent assessment of the capacity, capability and maturity of individual utilities to serve as the basis for identifying capacity requirements and delivering needs-based assistance, and
 - The elements of this assessment should be linked to the objectives of the regulatory framework and the LWU sector, and
 - Commitment for this framework should be developed in collaboration with LWUs and other key Government, community and industry stakeholders, and
 - A commencement date for a process associated with this, and a target date for its implementation.
- Develop the details of the action 'investigating minimum service levels with alternative funding models. This action should include:
 - Reframing minimum service levels as 'minimum acceptable standards', and
 - A commitment to initiate a state-wide engagement process to determine what these minimum acceptable standards should apply to, how they should be set and measured, and
 - A process to ensure these standards are linked to the overarching objectives of regulation and the LWU sector, and
 - A process to link the delivery of standards by LWUs to a consistent and transparent needs-based funding arrangement to support implementation.

Technical Assessment and Approvals

PIAC supports the Roadmap's identification of planned changes to the technical assessment and approvals functions of the Department.

Structural separation of assessment and assistance functions

The regulatory functions involved in assessments and approvals must be clearly separated from the informational, enabling, and assistance functions DPIE undertakes. This is a requirement for establishing transparent and robust assessment processes, while ensuring that LWUs have access to a range of resources and assistance to help them meet those standards. These functions must be kept transparently structurally separate.

Under planned changes to the Department's technical assessment and approval functions, PIAC considers the first three to be regulatory functions and the remaining two enabling and assistance functions.

Planned actions

PIAC supports the outlined improvement actions as effective responses to issues identified through engagement. However, the final action related to proposed improvements to enablers and assistance, does not have the detail of other actions and should be developed to include:

- A framework for assessing the capacity and maturity of individual LWUs to deliver against technical assessment and approvals requirements, and
- A commitment for the development of this framework to involve structured engagement with LWU's and relevant Government, agency and community stakeholders, and
- Development of a framework for the delivery of information, assistance, and enabling functions able to directly respond to the needs of individual LWU needs in meeting assessment and approvals requirements.

Performance Monitoring

PIAC supports the intent of the planned changes to the department's performance monitoring functions and agrees with the framing of success outlined in the Daft Roadmap. Robust, reliable and transparent performance monitoring and compliance, is fundamental to the identification and effective management of risks. It is also important to the maintenance of community trust that the framework will deliver secure and safe water services. Effective performance metrics and the availability of reliable performance data, underpins regulation of LWU services and informs ongoing reforms and improvements to planning and service operation.

Separation of performance monitoring and compliance functions from measures to assist LWUs to meet performance requirements and demonstrate compliance, must be a priority. As with technical assessments and approvals, these functions must be kept structurally separate, with this structural separation transparent and apparent.

Planned actions

PIAC supports the planned actions to improve the Department's performance monitoring regulatory function, with recommended changes including:

- Rationalise, rather than 'remove' performance and data reporting requirements where the Department's requirements duplicate other regulators or Government agencies reporting requirements. The requirements of the department should not be downgraded or reduced, but

be better coordinated and linked to other relevant regulators and agencies requirements so that the data is captured by the Department and available to assess performance, even if it may be indirectly provided through another agency or regulator. It is important that relevant performance data is collated and readily available to the Department.

- Ensure reporting requirements are more aligned with information needs, with a priority focus on the identification of risks and progress towards objectives of the LWU sector and contribution towards outcomes identified through the overarching objectives and principles of regulation.

Better regulation

PIAC strongly supports the intent to deliver better regulation through clearly outlined regulatory objectives and principles, a focus on outcomes-based regulation, and improvements to the co-ordination and alignment of regulators and agencies. The identified success outcomes are effective indications of what better regulation should deliver.

Planned actions

PIAC agrees the planned changes represent a meaningful forward plan of action to implement the intent of better regulation. There are opportunities to strengthen some actions, which would aid the Department's regulatory approach and make assessment of progress more possible. These include:

- Strengthening actions to implement explicit structural separation between regulatory, and enabling and advice functions.
- Developing resources to inform, educate, and support local water utilities to meet the expectations of community and regulators. This should include a framework to assess the capacity and maturity of LWUs across a range of metrics related to delivery against the objectives of the LWU sector, and the performance required through regulation. Information, education, support, and capacity building resources should then be made available to LWUs according to their specific capacity and maturity needs.
- Adding an action to investigate options for further regulatory and legislative reform to assist in delivering against the objectives of the LWU sector and consistent regulation of water services across NSW. Particular consideration should be given to the need for clarity of roles and responsibilities, consistency of outcomes across the State, co-ordination across regulatory functions, transparent accountability, and improving legislative and regulatory certainty over the long-term.

Roles and Responsibilities

PIAC agrees with the outline of current roles and responsibilities in the Draft Roadmap. We reiterate the need for the Roadmap to initiate a review process assessing the regulatory and legislative framework, to identify potential for reform opportunities that could deliver more effective outcomes in water services throughout NSW.

Enablers and Support

Separately outlining supporting and enabling activities undertaken by the Department is an appropriate step in separating these activities from the Department's regulatory functions. The Roadmap should consider embedding this separation by creating a dedicated 'enabling and support' entity within DPIE Water that could provide information, assistance, support and enabling activities with a remit separate from activities related to the setting, monitoring and enforcing of regulatory standards and processes.

A framework for assessing LWU maturity and capacity

PIAC recommends development of DPIE's enabling functions to include the creation of a framework for assessing the capability and maturity of individual LWUs across key areas related to the objectives of the LWU sector, and the regulatory requirements of LWUs. This should include the following practical metrics for an LWUs capability:

- Assess risk,
- Develop and retain skills,
- Undertake and contribute to strategic planning,
- Plan and deliver infrastructure,
- Collaborate effectively,
- Collect and provide relevant data, and
- Assess and develop innovative and sustainable service responses.

This framework would provide a consistent basis for identifying effective enabling and assistance measures, and targeting them to individual LWUs according to their needs. It could also provide a foundation for any investigation of alternative funding mechanisms to support minimum acceptable standards, and ensure consistently sustainable and affordable service delivery by all LWUs.

In relation to the enabling and supporting activities outlined in the Draft Roadmap, PIAC notes the following:

- Risk awareness:
Ensure councils and local water utilities have an effective awareness of their risks and risk management for their infrastructure, operations and services, and that they are capable of identifying risks in a timeframe enabling effective response and mitigation.
- Advice and support:
Develop a framework for ascertaining LWU maturity and capability as the foundation for identification of support, assistance and enabling measures to address capability or maturity deficits according to LWU needs.
- Regional collaboration:
Develop a framework of scenarios and modes of potential collaboration that LWUs can use to identify appropriate options. This should include scenarios for regional, catchment, infrastructure, planning, skills or situation-based collaborations.

Continued engagement

PIAC welcomes the opportunity for further contribution to the Town Water Risk Reduction program and to meet with DPIE and other stakeholders to discuss these issues in more depth, and contribute to further processes developing The Roadmap.