



The price is right?

**Response to IPART Draft Determinations for both
Sydney Water and Hunter Water**

18 April 2016

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Energy + Water Consumers' Advocacy Program

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from NSW Trade and Investment for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Energy + Water Consumers' Advocacy Program

This Program was established at PIAC as the Utilities Consumer's Advocacy Program in 1998 with NSW Government funding. The aim of the program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW;
- Tenants Union of NSW;
- Ethnic Communities Council of NSW;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW; and
- Good Shepherd Microfinance.

Introduction

PIAC welcomes the opportunity to comment on IPART's draft price determinations for Sydney Water¹ and Hunter Water for the 4-year period from 1 July 2016 to 30 June 2020 (the 2016 determination period).² PIAC has previously made submissions to both the Sydney Water and Hunter Water price proposals and to IPART's issues paper for both price determinations. In this submission PIAC makes targeted comments that generally apply to both proposals. This submission is in response to both draft determinations.

Sydney Water price determination

In the draft determination, IPART has mostly accepted Sydney Water's planned revenue and prices. IPART has determined to further reduce both capital expenditure and operating expenditure for Sydney Water. This will result in a reduction in household bills. A typical household bill will decrease by \$103 (\$33 lower than Sydney Water's initial proposal), whereas residents of a typical apartment will receive a reduction of \$87 (\$32 lower than Sydney Water's initial proposal) and a typical pensioners bill will be reduced by between \$8 and \$22. PIAC supports this determination and welcomes the reduction in customer bills.³

A major contributor to this reduction is the removal of Sydney Water's old IT system from the Regulated Asset Base (RAB) as Sydney Water is implementing a new billing/IT system. PIAC is supportive of both the move to a more contemporary and innovative billing system and the removal of the old system from the RAB, on the basis that customers should not be paying for a system that will no longer be in use.⁴

PIAC's previous submission supported Sydney Water's proposal, and in particular of setting the water usage charge at 1.97. We are pleased to see that IPART has accepted this, given this figure was obtained by considering customer preference for greater control over their bills.⁵

Recommendation 1

PIAC supports the adoption of IPART's proposed revenue and prices for Sydney Water for the next price determination period.

Hunter Water price determination

IPART has proposed accepting Hunter Water's water usage charge of \$2.22, on the basis that consumers have indicated this is the preferable option to enable them to have greater control over their bills.⁶

IPART has adjusted the lifespan of Hunter Water's asset, which will result in an increase in the depreciation allowance, as Hunter Water will have less time to pay for these assets. In addition,

¹ IPART *Review of prices for Sydney Water Corporation. From 1 July 2016 to 30 June 2020. Water – Draft Report.* 2016.

² IPART *Review of prices for Hunter Water Corporation From 1 July 2016 to 30 June 2020. Water – Draft Report.* 2016.

³ IPART see above n 1,179 and 181.

⁴ Ibid 12.

⁵ Ibid 124.

⁶ IPART see above n 2, 90.

IPART has assessed that Hunter Water's efficient costs are approximately \$25 million higher than Hunter Water had indicated in its initial pricing proposal. These two factors contribute to an increase in household bills. A typical household bill will increase by \$33 (\$7 higher than Hunter Water's proposal). A typical apartment increase will be \$27, which is \$9 lower than Hunter Water's proposal due to IPART's decision not to equalise sewage service of apartments to that of a free standing house.⁷ Pensioners will see an increase of \$22, which is \$7 more than Hunter Water's proposal.⁸

IPART has reviewed the asset lives for Hunter Water's infrastructure and determined the current asset lives for old infrastructure of 70 years and new of 100 years is too long. Consulting firm, Jacobs,, which was contracted to assess Hunter Water's expenditure, determined the new age should be 67 for new assets and 62 for old assets. This is a significant change, based on reweighting towards assets that have a shorter lifespan. IPART has proposed to transition the lifespan of the assets over the price determination period to smooth out the increase for customers.⁹

IPART commissioned Jacobs to review the asset lives, as this had not been done for the past 10 years. As this is the first time asset lives have been reassessed, PIAC considers it would be beneficial to undertake a more detailed assessment of asset lives and the methodology for calculating asset lives. Given this, PIAC considers that it would be reasonable to smooth the impact of the change in asset lives over not just this price period but over the following period as well, to ensure that there is time to do a more detailed analysis across the utilities.

Recommendation 2

PIAC recommends that IPART conduct or commission a more detailed analysis of the methodology to calculate asset lives.

Recommendation 3

PIAC recommends the transition to the lower asset lives be smoothed over two price periods to enable time for a more comprehensive review of asset lives, in order to ensure the correct amount is passed on to consumers.

Components common to Sydney Water and Hunter Water

Regulation

Sydney Water's price proposal included a number of changes to the regulatory process, including the introduction of a Weighted Average Price Cap (WAPC), an Efficiency Benefit Sharing Scheme (EBSS) and a general cost pass through provision.

IPART has decided to introduce pricing flexibility rather than a WAPC by allowing Sydney water and large water users (annual water use 7.3ML) to enter into unregulated pricing agreements with Sydney Water. PIAC's original submission did not support the introduction of a WAPC. PIAC supports IPART's decision to not adopt a WAPC, given the nature of a monopoly business and potential for cross-subsidies. PIAC requests additional information about how the adoption of an

⁷ Ibid142.

⁸ Ibid 144.

⁹ IPART see above no 1, 71 and Jacobs, *Hunter Water expenditure review – Final Report*, 2016, 205-208.

Efficiency Carryover Mechanism (ECM) lowers the risk of cross-subsidies and makes it a more preferable option.

At this stage, PIAC does not have a view on the definition of large users, but recommends that IPART take a staged approach to this change, and re-evaluate once the new system has been trialled. Given the small number of customers captured by the proposed definition, it would be reasonable to review it in the next price determination period and consider expanding the definition to capture a larger number of non-residential customers.¹⁰

IPART has proposed the implementation of an ECM based on external analysis that indicates an asymmetric ECM would be the best method for addressing the disincentive to make efficiency savings in the latter part of the price period.¹¹ The proposed ECM will allow Sydney Water to retain any permanent efficiency savings for a four-year period before passing them onto customers, but the measure will not apply to overspend. The proposed ECM will only apply to controllable operating expenditure, that is operating expenditure excluding the costs of purchasing bulk water, which is variable year to year, which equates to approximately 60% of operating expenditure. PIAC supports this approach, providing its implementation is reviewed at the next price determination to check if it is working to remove the disincentive to make efficiencies at the end of a price determination period, but is not being gamed. PIAC considers IPART's decision to continue to review spending by retaining the ability to reset expenditure in each determination period an important safeguard to ensure the ECM is beneficial to consumers.¹²

IPART has indicated that it will develop benchmarking for broader use within the urban water sector in NSW.¹³ PIAC supports the greater use of performance benchmarking, and would like additional information about how it will be done and used. PIAC would also like to be involved in the development of the benchmarking process, to help ensure that this process benefits customers.

Recommendation 4

PIAC recommends that IPART review the Efficiency Carryover Mechanism during the next price period to ensure the strength of the incentive is correct and that it does not lead to unintended outcomes.

Additional fees

This section deals with associated fees, and while the actual amount charged is different for the two utilities, the issues are common between them and will be considered together.

Dishonoured payment fees

IPART has determined to maintain the current dishonoured payment fees for both utilities after determining they are both cost reflective. Sydney Water's dishonoured payment will be \$12.27,

¹⁰ IPART see above n 2 21-26; IPART see above n 1, 30-35.

¹¹ Cambridge Economic Policy Associates *Advice on efficiency carryover mechanisms Independent Pricing and Regulatory Tribunal (IPART) – Final Report*. 2016, 40.

¹² IPART see above n 2, 26-29; IPART see above n 1, 36-41.

¹³ IPART see above n 2, 29-31; IPART see above n 1, 44-46.

with adjustments each year for inflation¹⁴, and Hunter Water's will be \$28.45-40.95 depending on the payment mechanism that the customer used, also adjusted up for inflation each year.¹⁵ PIAC accepts that both fees are cost reflective, and that Hunter Water's is larger than Sydney Water's is still reasonable. PIAC understands that the different prices reflect the different payment method (i.e. Australia Post, bank debit or cheque). Based on the information provided, it was difficult for PIAC to assess why it would cost more for a dishonoured payment through Australia Post in the Hunter Valley rather than in Sydney.

This issue was clarified at the public forum on these fees on Monday 11 April 2016. Hunter Water, as part of its contract with Australia Post, is charged more for dishonoured cheques than Sydney Water. In addition, Hunter Water's IT system does not allow for automatic processing of dishonoured/declined payments and the additional labour costs result in a higher fee. Hunter Water have indicated that they are happy to move to a single fee set at the rate for declined direct debit payments, for customer simplicity and processing simplicity. This fee will be set at \$28.45 and with advancements in Hunter Waters IT system during this price determination, PIAC hopes this fee will be reduced in future determinations. Given this clarification, PIAC is satisfied this fee is cost reflective and transparent.

Late payment fee

IPART has indicated it supports Sydney Water's proposed late payment fee of \$4.16, with an increase each year in line with inflation to \$4.40 by 2020. IPART is satisfied there are sufficient protections for vulnerable consumers to ensure an additional fee does not adversely affect them. IPART has also indicated there should be an additional provision that a late payment fee can only be applied if the customer is notified prior to the late payment fee.¹⁶ PIAC seeks clarification if this notice is to be given each time a late payment fee is applied, or whether it is just a once off warning that a late payment incurs a fee.

Recommendation 5

PIAC recommends that IPART clarify the requirement for Sydney Water to provide notice that a late fee applies.

Credit card fee

In 2012, NSW Treasury required that all state owned corporations and government agencies implement a credit card fee for payments made by credit card. As such, Sydney Water is implementing a 0.4% credit card fee. PIAC sought provisions to protect vulnerable customers who may use credit cards as a 'safety net' for when they are unable to balance competing financial demands. IPART contends that this is not required:

In its submission, the Public Interest Advocacy Centre (PIAC) recommended the credit card fee be subject to similar hardship protections as the late payment fee (discussed below), as some low-income households may have no choice but to use a credit card to pay their water bill. However, we consider this is unnecessary, as customers experiencing financial hardship

¹⁴ IPART see above n 1, 158-159.

¹⁵ IPART see above n 2 123-124.

¹⁶ IPART see above n 1 158-159.

have the right under the Customer Contract to defer payment and to negotiate an installment plan.¹⁷

PIAC acknowledges that people experiencing hardship are able to negotiate a payment plan, which may mean they do not rely on credit cards to pay. However our concern remains that a significant proportion of people who are vulnerable are not on hardship plans and do not have a payment plan set up. According to Sydney Water, 2% of their customer base is on a hardship plan.¹⁸ At the same time, figures for 2012 show that 13.9% of the population lives below the poverty line,¹⁹ in addition to people sometimes referred to as 'working poor' who sit just above the vulnerable line. In light of evidence that there are many people experiencing hardship who are not necessarily on payment plans, it is not sufficient to say that simply because the option of setting up a payment plan exists there is no reason to provide further assistance.

Recommendation 6

PIAC recommends that IPART conduct economic and social modelling of the impact of credit card fees on vulnerable and 'working poor' customers.

Recommendation 7

PIAC recommends that the NSW Government direct IPART to regulate credit card fees in addition to the other fees it regulates, such as late and irregular payment fees.

Conclusion

PIAC notes that during the public forum for the pricing proposals for both Sydney Water and Hunter Water, many stakeholders expressed concern about the role water plays in the livability of urban areas. PIAC understands this issue is not within IPART's jurisdiction, however it is surprising that IPART did not mention this as context in the draft determination. PIAC notes that it would be useful for the economic regulator to acknowledge the context of its work, and be involved in these discussions.

PIAC is generally supportive of the draft price determinations for both Hunter Water and Sydney Water. PIAC has sought clarification about some points, including protections for consumers who are experiencing hardship and around fees. In addition, PIAC has sought clarification of the process of revaluating the age of Hunter Water's assets as this has a material impact on the bills of Hunter Water customers.

Finally, PIAC thanks IPART for the opportunity to comment, and looks forward to being involved in discussions as the regulatory changes made by IPART are developed and implemented.

¹⁷ Ibid 155.

¹⁸ Personal communication 2016.

¹⁹ Australian Council Of Social Services, *Poverty in Australia 2014*. 2014, 8.