



Australian Government
National Water Commission

General Manager
Water Markets and Efficiency Group

Ms Wendy Craik
Commissioner
Productivity Commission
Level 2, 15 Moore Street
Canberra City ACT 2600

Dear Ms Wendy Craik

In June 2010 the National Water Commission (NWC) commenced the *Developing future directions for the urban water sector* project. The purpose of the project is to identify the scope for further reforms to help the water sector perform and better manage future risks and challenges. As part of the project the NWC has had recognised experts in the water sector prepare assessment reports. The Productivity Commission has expressed an interest in receiving the assessment reports for consideration in the Productivity Commission's public inquiry into Australia's urban water sector.

Ms Jo Benvenuti, Executive Officer of the Consumer Utilities Advocacy Centre, prepared the attached paper as an assessment report on the topic area 'voice of the customer'. Ms Benvenuti has given her permission for the NWC to forward this paper to the Productivity Commission for inclusion in the public inquiry.

Yours sincerely

Will Fargher

General Manager
Water Markets and Efficiency Group

10 December 2010

Voice of the consumer:

an Urban Water Assessment Report
prepared by Jo Benvenuti for the National Water Commission

October 2010

Jo Benvenuti is Executive Officer of the **Consumer Utilities Advocacy Centre**.

CUAC is an independent consumer advocacy organisation, established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In particular, CUAC represents the interests of low income, disadvantaged, rural and regional, and indigenous consumers.

CUAC aims to:

- provide a voice for Victorian utility consumers in the regulatory debate;
 - increase the capacity of consumers and consumer advocates to influence the regulatory debate, particularly on issues affecting low-income, disadvantaged and rural consumers;
 - research and fund research into consumer utility issues, with a particular focus on low-income, disadvantaged, and rural consumers, and to disseminate that knowledge as widely as possible; and
 - monitor consumer utility issues, particularly those affecting low-income, disadvantaged, and rural consumers.
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Context

Urban water reform and the NWI – Looking for the consumer

Urban water reform under the 2004 Intergovernmental Agreement on a National Water Initiative (NWI) has so far failed to include appropriate consideration of consumer issues. With the overarching goal of developing a 'nationally-compatible, market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes',¹ the NWI establishes agreed long-term directions for water policy and management.

With regard to urban water reform, one of the eight 'key elements' in the NWI, intended outcomes specified are healthy, safe and reliable water supplies; increased domestic and commercial efficiency; increased re-use and recycling; facilitation of urban-rural water trading; encouragement of innovation and achievement of 'improved' pricing for metropolitan water. Conspicuously missing, however, is an objective that explicitly addresses consumer issues.

This lack of consideration of consumer issues in urban water reform is mirrored throughout the NWI. Although the agreement does refer to 'public benefit outcomes' as an objective, the NWI makes no reference to consumer protections and indeed, while 'users' are mentioned, the word 'consumer' does not appear. Discussion of key consumer issues (such as consumer rights and protections, consumer engagement in water policy and management, and the social implications of water reform) is either limited or absent.

From this starting point, neglect of consumer interests has continued. For example, the 2009 Biennial Assessment of Progress under the NWI recommends reforms likely to have significant consumer impacts, without consideration of these impacts. These include, for example, Recommendation 8.6 that tenants be brought into 'a transparent water charging environment' on the basis that '[the] current partial coverage of tenants is inconsistent with sound long-term water resource management principles'.²

This approach may have merit, but decisions on this issue must take consumer impacts into account. This is particularly important for tenants, who are more likely than owner-occupiers to be on low incomes. Victorian tenants currently pay water usage charges, while property owners remain responsible for service availability charges. At a time of substantial price increases, transferring service charges to tenants could exacerbate many tenants' financial difficulties in paying their water bills. Examination of impacts such as these must form a part of policy decisions on water pricing.

Consumer rights and urban water reform

While consumers have been largely missing from NWI reform activities, the 2008 COAG Work Program on Water included as an agreed action to progress urban water reform a 'review [of] consumer protection arrangements in relation to services provided by water utilities'.³ The inclusion of this action is a positive development, but the process used to undertake this action has been

¹ Intergovernmental Agreement on a National Water Initiative (2004), p. 3.

² National Water Commission (2009) *Australian Water Reform 2009: Second biennial assessment of progress in Implementation of the National Water Initiative* Canberra: Commonwealth of Australia, p. 160.

³ COAG Work Program on Water – November 2008 – Agreed Actions (2008), p. 1.

seriously flawed. As the sole consumer representative on the Department of Sustainability, Environment, Water, Population and Communities' (SEWPAC) Urban Water Stakeholder Reference Panel (UWSRP), my organisation the Consumer Utilities Advocacy Centre (CUAC) commented on a preliminary discussion paper prepared by the department, which sought to identify consumer protection arrangements across Australia, as well as 'consumer rights and needs'. It was CUAC's firm view that the identification of consumer rights and needs should *begin* with thorough, meaningful consultation with consumers. Such consultation would require a staged approach, and, given the current lack of consumer engagement in water issues, should begin with capacity building in consumer advocacy and the creation of structures to assist consumers to participate. I return to this theme later in the report.

As well as being based on thorough consultation, an identification of consumer rights and needs might build on the work that has already been done in this area, both within Australia and internationally. For example, the United Nations (UN) Guidelines for Consumer Protection offer one way of conceptualising consumer rights. The UN General Principles have been 'translated' into the following statements of consumer rights by Consumers International:

1. **The right to satisfaction of basic needs** - To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
2. **The right to safety** - To be protected against products, production processes and services which are hazardous to health or life.
3. **The right to be informed** - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
4. **The right to choose** - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
5. **The right to be heard** - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.
6. **The right to redress** - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
7. **The right to consumer education** - To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.
8. **The right to a healthy environment** - To live and work in an environment which is non-threatening to the well-being of present and future generations.⁴

These rights are not necessarily comprehensive and there needs to be consideration of how they relate to water in particular. For example, with regard to 'the right to choose', water is a largely homogenous product and retail competition and choice may not be practical or deliver most cost-effective services to consumers. Nevertheless, these eight rights offer one useful starting point for examination of consumer issues in relation to urban water reforms. Consideration of consumer rights should be integrated into future urban water reform policy, planning and implementation.

⁴ Consumers International, 'How are consumer rights defined?', on the Consumers International website <http://www.consumersinternational.org/Templates/Internal.asp?NodeID=95043>.

Barriers

The unique importance of water – implications for reform

Water is fundamental for life and health: human beings cannot live for more than a few days without water. Water is the most essential of all services, being necessary for drinking, food preparation and hygiene. Access to safe, potable water is also a prerequisite to the realisation of a range of human rights including the rights to life, food, and an adequate standard of living.

Ensuring access to water

Recognition of the crucial importance of access to water has given rise to a push for recognition of a human right to water. Since 1990, there have been more than ten formal UN declarations on the right to water,⁵ most recently in July 2010.⁶ In 2002, the UN Committee on Economic, Social and Cultural Rights (CESCR) adopted *General Comment 15*, which set out in detail the content and interpretation of the right to water. In *General Comment 15*, the CESCR observed that the right to water entails access to ‘sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use’.⁷ Water should be accessible to all, including ‘the most vulnerable or marginalised’, with accessibility incorporating both physical and economic accessibility (affordability) and access to information on water issues.⁸

General Comment 15 is not a legally binding document and indeed, the categorisation of water as a human right remains an issue of debate. Nevertheless, that all Australians are entitled to a supply of water necessary for an adequate standard of living is a view widely shared by the community. While water may be made available under a range of frameworks and with the involvement of private sector and other actors, government retains ultimate accountability for ensuring that all Australians have access to water.

Constraints on reform

The unique importance of water to human life and health, and government responsibility for ensuring access to water, both place necessary constraints on urban water reform. Recognising water’s critical importance does not imply that reform cannot occur. However, it does mean that consideration of the implications on access must be included in the reform process, and that potential reform measures that might jeopardise access to water should not be pursued. At the same time, water’s nature as an essential service underscores the importance of facilitating meaningful consumer and community engagement in water reform policy and implementation.

As well as placing limits on the types of reform that *should* be put in place, water’s unique importance also means that some measures that are effective in other sectors are unlikely to succeed with regard to water. Scarcity pricing is one useful example of a reform that has been proposed, often with little consideration of water’s unique characteristics.

⁵ Consumers International (2005) *Bridging the gaps: the case for a General Agreement on Public Services*, p. 19.

⁶ ABC News, ‘UN enshrines water access as a human right’, July 29, 2010. <http://www.abc.net.au/news/stories/2010/07/29/2967748.htm>

⁷ United Nations Committee on Economic, Social and Cultural Rights (2002) *General Comment no 15 (2002) on the right to water (Art. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, p. 2.

⁸ United Nations Committee on Economic, Social and Cultural Rights (2002) *General Comment no 15 (2002) on the right to water (Art. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, p. 6.

Water restrictions and scarcity pricing are two primary potential tools that policymakers can use to manage demand. Water restrictions, despite the high degree of community acceptance they enjoy,⁹ are viewed by some as economically inefficient and therefore undesirable. It is often suggested that scarcity pricing should instead be used to convey information to consumers about the need for efficient water use. While there may be some merit to this approach, policymakers also need to consider how such a reform would work in a water sector characterised by longer timeframes for price information to flow through to consumers and for consumers to change water use behaviours, and, importantly, the low price elasticity of demand for water.¹⁰

It is also worthwhile noting that although the apparent success of reforms in other sectors is often cited in support of proposals for urban water reform, water is different from other network-based utilities in some important ways. Noteworthy differences between water, electricity and gas include:

- **Reliability of production** – climate-dependent water storages are less reliable than electricity and gas;
- **Storage** – water, unlike electricity, can be stored in dams for many years;
- **Transport** – unlike electricity and gas, water is heavy and costly to transport;
- **Quality** – electricity quality can be specified and gas from various sources mixed, while different water sources have different qualities and disinfection treatments, with public health implications;
- **Scarcity pricing** – Such pricing for energy occurs over very short times, while scarcity pricing for water would be in months or quarters;
- **Environment** – the water industry faces environmental impacts from extraction, treatment, sewerage treatment/disposal and stormwater;
- **Network losses** – network losses are minor in energy but significant in water transport.¹¹

The National Water Commission in its 2008 *Update of progress in water reform* notes that ‘structural reform in the [water] sector has generally not kept pace with that in similar sectors such as gas, electricity or transport’.¹² While true, this should not be viewed as a negative. Given water’s special characteristics (not least its critical importance to public health), a more cautious approach is arguably necessary.

⁹ O’Dea, Gerard and Jennie Cooper (2008) *Water Scarcity: Does it exist and can price help solve the problem?*, Water – Working paper, Sydney: Independent Pricing and Regulatory Tribunal, p. 10.

¹⁰ O’Dea, Gerard and Jennie Cooper (2008) *Water Scarcity: Does it exist and can price help solve the problem?*, Water – Working paper, Sydney: Independent Pricing and Regulatory Tribunal, p. 11-13.

¹¹ Ross Young, ‘Urban Water Management in Australia – the big picture overview’, presentation to the *ACCC Conference*, Surfers Paradise, 30 July 2010.

¹² National Water Commission (2008) *Update of progress in water reform: input into the water sub group (WSG) stocktake report* Canberra: NWC, p. 17.

Opportunities

Building on examples of good practice

Across and within jurisdictions there is a variety of practices and consumer protections. This includes examples of best practice service delivery (including among metropolitan Melbourne water businesses) as well as some examples of poor practice and inadequate consumer protections. Victorian water consumers, particularly within metropolitan Melbourne, currently enjoy good water service delivery and strong consumer protections. Strengths include:

- ‘competition by comparison’ through public performance reporting on a range of measures including affordability, assistance to customers experiencing hardship, water supply reliability, restrictions and legal actions;¹³
- explicit recognition of consumer interests with regard to water pricing in the *Water Industry Regulatory Order* 2003;
- regulatory requirements for water businesses to develop and publish customer charters and hardship policies;¹⁴ and
- Guaranteed Service Level schemes whereby water businesses compensate customers who have received customer service below specified standards.¹⁵

This is the result of many years of work by government, regulators, water businesses and consumer representatives. In Victoria, the independent regulator, the Essential Services Commission (ESC), has recognised the importance of balancing the interests of consumers and water businesses. It should be noted that this has not come at the expense of water reform, with Victoria acknowledged as a leader in this area. The Victorian example illustrates the potential for the reform to proceed concurrently with the strengthening of consumer protections and engagement of consumers.

Urban water reform processes at the national level have the potential to weaken the high standards and protections currently in place in some areas. We have seen this occur recently in the energy sector with the newly developed second draft of the National Energy Customer Framework (NECF). The proposed legislation omits a number of protections currently afforded Victorian energy consumers, meaning that consumer advocates are now advocating for appropriate derogations to ensure these protections are maintained.

While national processes have the potential to weaken standards, they also present an opportunity to build on examples of best practice, bringing areas of poor performance, standards and protections up to a higher level. For this to occur it must be an explicit aim. For example, in its comments to SEWPAC regarding preliminary work on the COAG Work Program on Water action a review of consumer protection arrangements, my organisation noted that the aim of the exercise had not been identified or articulated. CUAC argued that the objective must be to bring all service delivery and customer protections up to best practice levels.

¹³ See Essential Services Commission (2010) *Performance of Urban Water and Sewerage Businesses 2008-09*, Melbourne: ESC.

¹⁴ See Essential Services Commission (2009) *Customer Service Code: Metropolitan Retail and Regional Water Businesses*, Melbourne: ESC.

¹⁵ *Ibid.*

Leveraging consumer engagement for better reform outcomes

Value of consumer and community input

A number of international statements and declarations have acknowledged the importance of an inclusive, participatory approach to water development and management.¹⁶ The potential for participation to improve reform outcomes has also been demonstrated in research, with reviews in France, the United Kingdom and the United States finding that including community knowledge, values and preferences helps in identifying issues and formulating policies for water management planning.¹⁷

As noted by White, Noble and Chong, decisions about, for example, water supply security involve ‘values, objective-setting processes, and complex trade-offs’. The impacts of such decisions are varied, difficult to compare, and in many areas, unquantifiable. Because of this, such decisions cannot be made solely on scientific, engineering or economic grounds, but should include deliberative processes that ‘elucidate the preferences, values and choices of citizens who are able to have access to information and to engage in questioning of experts and dialogue with each other in a well-facilitated process.’¹⁸

Where such processes are in place, consumers and communities have the capacity to provide high-quality input. Reviewing research into community views on water allocation matters, Syme and Hatfield-Dodds find that there is ‘systematic evidence’ that communities can apply traditional philosophical, economic and sociological approaches (expressed in lay language) to decision-making. There have also been demonstrations of communities making reasoned preferences and trade-offs in water decision-making.¹⁹

Increased consumer engagement is also imperative because without broad-based support, reform measures are vulnerable. Hussey and Dovers make this point well in their introduction to a volume on the social and institutional challenges in Australian water management:

*The objectives of the NWI are ambitious, in many cases contentious, and not yet clearly understood by many people, so there is a very real need to bring the community along. Experience from reforms across a range of policy sectors, especially where resource rights are being revised, strongly suggest that the successful implementation of the NWI will depend on the communication of its underlying logic, objectives, anticipated impacts and decision-making processes to key stakeholders, whether they be from industry or the community.*²⁰

As complex urban water reforms proceed, effort needs to be made to inform and engage consumers and build ‘water literacy’ in the community. Where important (and frequently expensive) water policy decisions are made without appropriate consumer and community engagement, this can lead

¹⁶ Mackenzie, John (2008) ‘Watered Down: The Role of Public Participation in Australian Water Governance’, *Social Alternatives* 27(3) p. 9.

¹⁷ Ibid

¹⁸ White, Stuart, Kate Noble and Joanne Chong, ‘Reform, Risk and Reality: Challenges and Opportunities for Australian Urban Water Management’, *Australian Economic Review* 41 (4) p. 433.

¹⁹ Syme, Geoffrey J and Steve Hatfield-Dodds (2007) ‘The role of communication and attitudes research in the evolution of effective resource management arrangements’ in *Managing Water for Australia: the Social and Institutional Challenges*, eds Karen Hussey and Stephen Dovers, Collingwood: CSIRO Publishing, p. 12-13.

²⁰ Hussey, Karen and Stephen Dovers (2007) ‘Introduction: Informing Australian Water Policy’ in *Managing Water for Australia: the Social and Institutional Challenges*, eds Karen Hussey and Stephen Dovers, Collingwood: CSIRO Publishing, p. xiii.

to community anger and breakdown of trust in government and water businesses.²¹ Such a dynamic can be seen, for example, in ongoing controversy regarding the Victorian Desalination Project.

It is also worth noting that there is significant community interest and goodwill in relation to management of water resources. In Victoria, we have seen community education on water conservation enjoy strong success, demonstrating an interest and commitment on the part of consumers to good management of water resources. Genuine, respectful engagement has the potential to harness this goodwill and direct it towards achievement of mutual goals.

Consumer and community concerns

Better engagement of consumers and communities in water management can be expected to bring different perspectives and priorities into focus. Based on their research on community engagement in water reform, Syme and Hatfield-Dodds observe that communities have a strong interest in water resource issues, and that there is often a 'disconnect' between the efficiency, control and industry outcome priorities of managers and policymakers and communities' primary interests in fairness and distributional impacts.²²

Syme and Hatfield-Dodds' findings resonate with the experiences of my organisation. In our discussions with consumers, community groups and community services workers, we find that concerns often centre on issues such as:

- the costs and benefits of initiatives, and how well these have been investigated prior to implementation;
- the differential impacts of policy for consumers of different types and in different areas, and the plans that are in place to deal with these impacts; and
- process and transparency, and whether those affected have had the opportunity to contribute to decision-making.

While these issues figure strongly for consumers and the community, CUAC's experience has been that consideration of distributional impacts and consumer protections is rarely integrated into major reform decisions. Instead, reforms are planned with a fairly narrow focus on economic efficiency, with distributional impacts and consumer protections set aside as consumer or social policy considerations only. This disjointed approach rests on the incorrect assumption that these issues *will* be appropriately addressed in other policy areas, but in fact leaves consumer interests vulnerable to slipping off the agenda. Even if these issues are appropriately addressed, the failure to integrate consideration of social and consumer impacts when major reforms are developed can leave insufficient time to develop social policy responses prior to implementation.

²¹ White, Stuart, Kate Noble and Joanne Chong, 'Reform, Risk and Reality: Challenges and Opportunities for Australian Urban Water Management', *Australian Economic Review* 41 (4) p. 433.

²² Syme, Geoffrey J and Steve Hatfield-Dodds (2007) 'The role of communication and attitudes research in the evolution of effective resource management arrangements' in *Managing Water for Australia: the Social and Institutional Challenges*, eds Karen Hussey and Stephen Dovers, Collingwood: CSIRO Publishing, p. 13.

Current engagement and consultation arrangement

Stakeholder engagement is given consideration within the NWI, with one planned outcome being to 'engage water users and other stakeholders in achieving the [NWI] objectives' by improving certainty and building confidence in reform processes; transparent decision making and the provision of 'sound information' at 'key decision points'.²³ These are to be achieved with 'open and timely consultation with all stakeholders'.²⁴

While the inclusion of stakeholder engagement as an outcome within the NWI is positive, its treatment is somewhat cursory and the agreement does not provide any detail or guidance as to how this may be achieved. Given water's unique importance, it is reasonable to expect that best practice, sophisticated engagement and consultation mechanisms be in place.

A key mechanism facilitating stakeholder engagement is the use of four stakeholder panels which provide input on programs and planning, including the Urban Water Stakeholder Reference Group (UWSRP). I sit on the UWSRP as the sole consumer representative. This is problematic firstly because of the limited opportunity for consumer input when only one representative is involved. Secondly, my organisation is Victoria-based and does not have the mandate (or knowledge of conditions elsewhere) to represent consumers in other jurisdictions on this national panel.

There needs to be thought given to increasing and improving mechanisms for consumer input into national urban water reform processes. An improved model for consumer consultation and engagement would include consumer representatives from different states and representing the range of consumer types (e.g. low-income, regional and small business consumers) so that consumer input reflects the range of circumstances of Australian water consumers.

Supporting professional consumer advocacy

There is an immediate need for a stronger consumer voice in national water reform processes. Effective professional consumer advocacy is an important means through which this can be achieved. Unfortunately, consumer advocacy in this area is currently constrained by a lack of resources. Compared to the energy sector, consumer advocacy in water is less vigorous and under-resourced. For example, consumer advocates in the energy sector can access capacity-building and advocacy funding through the *Consumer Advocacy Panel*, which has no equivalent in the water sector.

Consumer advocates require detailed and specific knowledge to contribute effectively to policy development processes. As professional consumer advocacy in water is currently under-developed, consumer advocates require financial support to build capacity and expertise. There may also be a need for funding to assist in the facilitation of consumer consultation, as government and regulators sometimes lack the skills base or relationships to consult with consumers directly.

Building knowledge and capacity in the social dimensions of water reform

Importantly, the NWI recognises the need for capacity and knowledge building to support implementation of reform. A number of specific knowledge and capacity building needs are

²³ *Intergovernmental Agreement on a National Water Initiative* (2004), p. 20.

²⁴ *Ibid.*

identified in the NWI, covering a range of mainly technical and scientific topics. The existence of 'social aspects' of water management is also acknowledged, although these are not identified or discussed.²⁵

Subsequent to signing of the NWI, the Australian Government through its *Water for the Future* strategy has established and provided funding to National Centres of Excellence in Desalination and Water Recycling. These Centres contribute to the knowledge and capacity-building objectives of the NWI by facilitating and providing leadership in research.²⁶

Social considerations and consumer issues need to be given a similarly high profile in Australian water management, and this could be achieved through the creation of a National Centre of Excellence in Water and Society. The Centre would provide national and international leadership in research on water consumer rights, experiences and preferences, consumer and community engagement models, and the social dimensions of water policy. Focusing systematically on development of the social research base for water reform, such a Centre could in turn encourage a better balance between economic, social and environmental objectives in water policy and planning.

²⁵ Intergovernmental Agreement on a National Water Initiative (2004) p. 21.

²⁶ Australian Government Department of Sustainability, Environment, Water, Population and Communities, 'National Centres of Excellence' on the SEWPAC website at <http://www.environment.gov.au/water/policy-programs/urban-water-desalination/centres-of-excellence.html>

Recommendations

1. Fully integrate consideration of consumer protections, rights and interests into future urban water reform policy, planning and implementation.
2. Recognise the maintenance of universal access to water necessary for an adequate standard of living as an objective of urban water reform.
3. Ensure that the unique characteristics of water are taken into account in urban water reform initiatives. This means that examination of costs and benefits of reform proposals should draw primarily on evidence from the water sector itself. When drawing on evidence from other sectors, such as electricity, analysis should also address likely implications of sectoral differences.
4. Ensure that any movement towards the harmonisation of consumer protections brings all jurisdictions up to a best practice standard, rather than weakening protections in some jurisdictions.
5. Ensure that consumer input in national urban water reform processes includes representation of a range of jurisdictions and consumer types.
6. In consultation with consumer advocates, develop a model for supporting professional consumer advocacy in the water sector.
7. Establish a National Centre of Excellence in Water and Society to provide national and international leadership in research on: water consumer rights, experiences and preferences; consumer and community engagement models; and the social dimensions of water policy.