



Ombudsman NT Investigation Report

'Bills, Bills, Bills'

Essential Services – Power and Water billing and debt management practices in an urban indigenous community

March 2016

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Overview

1. This report discusses how the Power and Water Corporation (PWC) has dealt with, and should deal with, billing and debt management for water supply to urban indigenous communities.

Special position of indigenous communities

2. Residents of indigenous communities are in a special position because of the nature of land tenure in those communities. No matter how many houses sit within a community, community title usually vests in one incorporated body. No matter how long a person has lived in a house, the house is not 'owned' by that person.
3. Some people might liken this situation to a long term tenant in a property owned by an individual landlord. However, there is a fundamental difference in that individual householders who wish to live in a community, often driven by ties to the land and family, do not 'own' a house.
4. This group tenure has many implications for individual householders. Among them is the relationship they have with essential service providers.
5. This report raises no issue with group tenure in indigenous communities. It does not suggest that individual tenure is superior or the preferred model. However, it does conclude that there are differences arising from group tenure that should be recognised and accommodated by organisations such as PWC.
6. There are also socio-economic factors that set indigenous communities apart from other group tenure situations where simple bulk billing of a corporate landlord may be a reasonable approach. In comparison for example, to an armed forces base, neither indigenous land owner corporations nor individual householders are likely to have deep pockets to cross-subsidise or cover unanticipated costs.
7. The report discusses the special arrangements that have previously been put in place by PWC in recognition of the special position of indigenous community residents and the rationale for continuing and enhancing those arrangements.
8. It deals primarily with one urban indigenous community but the discussion has broader relevance to similar communities throughout Darwin and other urban areas.
9. The central finding of the investigation is that it is essential for an effective process to be refined and implemented, in consultation with each relevant indigenous community, to ensure that each individual householder contributes equitably towards their share of water costs.

Bagot Community

10. The Bagot Community, which sits in the heart of Darwin, comprises approximately 60 houses. The community land, including the houses, is controlled by The Bagot Community Incorporated (BCI) as the holder of a Crown Lease in Perpetuity.
11. Water is supplied by PWC for the upkeep of grounds, gardens and other facilities and for household use. PWC is a public authority under the *Ombudsman Act*.
12. PWC maintains that the cost of water supply to the community and all the houses in it are solely the responsibility of BCI as the 'owner' of the land and that its only legal relationship is with BCI.

13. Even though it holds that position, PWC has since 2008-09 produced account information in respect of a large number of individual households and received payments for water supply from individual households in Bagot Community, often through Centrepay deductions.
14. Even with the collection of amounts from individuals, PWC maintains that there is a large amount owing by BCI for water supply and sewerage. Although there appears to be dispute about the size of the debt, PWC calculated the debt at one stage as amounting to approximately \$700,000. BCI has gone into voluntary administration, in large part because of that claimed debt.
15. This has given rise to two major issues addressed in this report:
 - a. How PWC has dealt with individual householders in Bagot Community and what steps it should take in this regard in the future.
 - b. How PWC has approached the growing debt of BCI and how it should manage existing and future debt of BCI and some other indigenous communities.

Individual householders

16. PWC must be commended for acknowledging the special nature of indigenous community land tenure arrangements and putting in place, from 2008-09, a process for recognition of individual household payments of water services debts.
17. It has however, recently decided to cease providing individual account information and accepting individual payments.
18. This report notes improvements that can be made to the process that was in place and discusses possible remedial action. The fact that the process could and should be improved cannot amount to a justification for discontinuing it.
19. The report discusses a number of reasons for PWC maintaining a process that recognises individual householder debt, including:
 - a. promoting individual financial accountability;
 - b. promoting efficient water use;
 - c. recognising special aspects of indigenous land tenure;
 - d. maintaining parity with other group living situations;
 - e. sound debt management;
 - f. compliance with community service obligations; and
 - g. PWC's role as a monopoly licence holder, government owned corporation and good corporate citizen.
20. Quite apart from the above factors favouring such a process, the reality is that PWC, notwithstanding its insistence that it only has a legal relationship with BCI, has developed a relationship with individual consumers by accepting payments from them for water supply. This has created a reasonable expectation on the part of those consumers that the money they paid will be applied for their benefit.
21. In light of the above factors, it would be inequitable and unreasonable for PWC to ignore that relationship and unilaterally abandon the process.

22. This is not to discount the time, effort and resources that PWC must put into making special arrangements. Receiving money from individual householders has positives and negatives for PWC. However, PWC operates in a Territory environment and should function in light of the special nature of that environment.
23. In relation to all of these issues, it is important to recognise that BCI and Bagot Community representatives are the key to developing a workable solution.
24. Whatever steps may have been taken by PWC in relation to debt owed by BCI, it is incumbent on PWC to enter into discussions with Bagot Community representatives to:
 - ensure that individual householders who have paid money to PWC for their water supply are not left out of pocket; and
 - look at options for future processes that recognise the interests of individual householders.

Bagot Community debt

25. The debt that PWC maintains is owed by BCI has grown substantially over a number of years, notwithstanding the waiver of significant amounts in the past.
26. In spite of this, PWC has, over those years, taken only limited action to manage debts relating to general water usage by BCI and usage for individual houses.
27. This has meant that the claimed debt has built up to represent a major financial burden for BCI and a matter which should be of significant concern to PWC.
28. The lack of timely and definitive action to manage debt has also opened the door to considerable dispute about the existence and extent of debt.
29. This is not to suggest in any way that BCI should not take primary responsibility for payment of its debt. However, it is equally important for PWC to maintain timely and effective procedures to keep track of, and properly manage the recovery of, debts that are owed to it, particularly when the amount of debt is substantial and growing.
30. PWC operates on a commercial basis, subject to receiving payments for performance of community service obligations spelled out by Government. There is an imperative on it to appropriately manage and collect debts that arise from whatever source.
31. Appropriate debt management with significant customers should always entail careful and regular monitoring of debt and regular dialogue with the customer to ensure understanding and acknowledgement of the debt and a continuing stream of payments. Prolonged failure by a service provider to address non-payment is only likely to turn a mole hill into a mountain of claimed debt that will be vigorously disputed by the customer.

Broader Indigenous community debt

32. Bagot Community is one of a number of indigenous communities in and around Darwin where major debts to PWC have built up over time.
33. The existence and growth of this debt represents not only a challenge for PWC but also an issue that bears consideration by the NT Government.
34. It is important for the NT Government to consider what approach it should take in relation to these issues, both regarding historical debt and costs that will arise in the future.

35. In that regard, I note that the *Administrative Arrangements Order*¹ provides that *Indigenous affairs* and *Indigenous policy* fall within the portfolio of the Minister for Indigenous Affairs, with the relevant agency being the Department of Local Government and Community Services.

Recommendations and consultation

36. I have made a number of recommendations to PWC and the NT Government in relation to the above issues.

37. I provided a draft of my report to PWC and a number of other interested parties for consideration and comment. Substantive responses were received from PWC and Ward Keller, representing members of the Bagot Community. Those responses are discussed in this Report, primarily in Chapter 5.

38. The detailed response of Ward Keller provided a considerable amount of useful background information. However, many of its submissions were aimed at persuading me to undertake or require further investigations into the precise circumstances of a large number of transactions and matters in legal dispute between PWC and BCI.

39. My investigation and report has focussed on raising a number of general issues that I consider PWC and the NT Government should address as a matter of priority. I do not have the capacity to investigate all the matters and transactions that appear to be in dispute between PWC and BCI and there would be little value in my expressing any concluded opinions on matters of legal interpretation which are at the crux of the legal dispute.

40. I have therefore briefly discussed in Chapter 5 a number of the issues raised by Ward Keller but have refrained from making a number of the specific findings and recommendations put forward by Ward Keller.

41. PWC accepted the general objectives of the recommendations but stated that, in some instances, it is not in a position to take sole responsibility due to factors outside its control. Accordingly, it proposed that a number of the recommendations be amended.

42. PWC submitted that a number of paragraphs discussing Ward Keller's submissions should not be included in this report, stating that "*including a summary of the submissions (which are primarily allegations against Power and Water) in the report:*

- a. implies that the submissions are relevant to the Ombudsman's investigation and warrant the Ombudsman's attention;*
- b. implies that Power and Water has been given an opportunity to and has not taken appropriate steps to address the matters raised;*
- c. may be taken by readers of the report to give weight to allegations of unlawful or improper conduct by Power and Water that may have no merit or legal grounding;*
- d. raise matters detrimental to Power and Water's reputation in an inappropriate forum; and*
- e. unintentionally results in the allegations being linked to the Ombudsman's recommendations which could result in broad dissemination of the allegations."*

¹ As at 15 February 2016.

43. While I have made some amendments to those paragraphs in preparing my final report, I have substantially retained them. It would be entirely remiss of me not to make reference to the lengthy submissions made on behalf of members of the community. My primary reason for discussing them has been to explain why I have chosen not to incorporate in my report a large number of recommendations proposed on behalf of those community members.
44. Including in this report discussion of submissions raised by an interested stakeholder should not be taken as adding weight or support to those submissions, except to the extent that the report expresses such support.

Recommendations

1. That PWC — having a responsibility to individual householders in the Bagot Community who paid money to it for the supply of water to their households — in consultation with BCI, take all reasonable steps to reconcile and credit/repay overpayments by those individuals. [It is noted that compliance with this recommendation is contingent on PWC obtaining detailed tenancy information from third parties (from BCI or potentially from individual householders)].
2. That PWC promptly move to reinstate a process that recognises and facilitates payments by individual householders in the Bagot Community for the supply of water services. That the process be developed in consultation with the NT Government and Bagot Community representatives, taking into account the factors and issues discussed in Chapters 2 and 3 of this Report.
3. That the NT Government and PWC undertake wide-ranging consultations with representatives of relevant indigenous communities to discuss the best approach or approaches to recognising and facilitating payments by individual householders in indigenous communities — and in doing so give careful consideration to the option of providing PWC meters for individual houses and discrete billing for individual householders.
4. That PWC, in consultation with the NT Government and relevant community representatives, review its approach to management of current debt owed by indigenous communities
5. That consultations be undertaken utilising the services of Indigenous interpreters where necessary and records of consultations be widely published within relevant communities.
6. That PWC review its billing and debt management practices to ensure that it has in place appropriate mechanisms for flexible and timely debt management in the future.

PWC's responses to these recommendations are discussed in Chapter 5.

In order to ensure that adequate steps are taken to implement these recommendations, I seek from the chief executive of PWC:

- a. within one month of the date of this report, a response that outlines the steps it has taken or proposes to take to give effect to each recommendation and any reasons for not taking all steps necessary to give effect to a recommendation; and
- b. every three months thereafter until full implementation, a summary of steps taken in progress towards implementation.

Chapter 1- Background

1. An indigenous community has existed at Bagot since 1938. Today it comprises 23 hectares and is home to 300-400 people living in approximately 60 houses. Primary responsibility for control of community land rests with The Bagot Community Incorporated (BCI), an incorporated association under the *Associations Act* (NT).
2. A number of services are provided to the Bagot Community by the Yilli Rreung Housing Aboriginal Corporation (YRHAC)². YRHAC is an independent Indigenous based incorporated body that delivers housing construction, management and maintenance, municipal³ and infrastructure services, life skill and support services. YRHAC has a Service Level Agreement with BCI. The agreement does not extend to collection of payments for water but YRHAC has advised and supported BCI in relation to water supply issues.
3. Neither BCI nor YRHAC falls within the jurisdiction of the NT Ombudsman.
4. Water supply in the Territory is regulated by the *Water Supply and Sewerage Services Act*. The Power and Water Corporation (PWC) is the licensed provider for the area in which the Bagot Community is situated. Section 59 of the Act provides the licensee with the power to charge for water supply services, sewerage services and related services.
5. For the Bagot Community, PWC has installed a main water meter and two sub-meters. One sub-meter measures flow for general purposes such as gardens, grounds, laundry and clinic. The other measures flow to the houses in the Community. PWC has always maintained that its sole legal relationship is with BCI as owner of the land that comprises the Community.

Water meters for individual houses

6. In 2008, as part of its Northern Territory National Emergency Response, the Australian Government sought to allocate funding for the installation of water sub-meters for a number of individual households in indigenous communities, one of which was the Bagot Community.
7. This ultimately resulted in individual sub-meters being installed in 2008 to measure water consumption for most houses in the Bagot Community.
8. My Office has reviewed a number of emails and file notes from that time which record discussions between the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the NT Department of Local Government, Housing & Sport (DLGHS), PWC, YRHAC and BCI. They reveal the progress of the project during 2008 and early 2009.
9. On 31 March 2008, the General Manager Retail, PWC emailed the Deputy Chief Executive Officer – YRHAC confirming details of an earlier phone conversation. The email indicated that FaHCSIA expressed a willingness to fund a project to install individual water meters on the Bagot Community estate. The General Manager noted that PWC could assist by oversighting the project and using its panel of subcontractors to install individual water meters. He stated that, although PWC would provide assistance with YRHAC's project management to install meters, PWC would not be assuming responsibility for any internal infrastructure, and that the responsibilities of PWC would terminate at the bulk water meter.

² Reference: *Yilli Rreung Housing Aboriginal Corporation (YRHAC) website* – www.yillihousing.com.au

³ Municipal Services include: power; roads; sewerage; water; dog control; airstrips; ground maintenance; and rubbish removal and rubbish tips.

10. On 1 April 2008, the DCEO - YRHAC emailed PWC indicating that he had spoken to the accountant for Bagot Community about the proposed installation of water meters, and listed a number of concerns. The accountant sought a meeting with PWC to discuss these further. The email noted that YRHAC were keen to be involved in discussions about the water meter project due to the ongoing requirement for maintenance of the infrastructure.
11. On 13 May 2008, FaHCSIA advised by email that funding was approved for 100 water meters at indigenous town camps. However, the number of meters required to cover the camps was 124. As such FaHCSIA began working towards identifying extra funding to cover this deficiency. FaHCSIA noted that Bagot Community alone required 59 meters. Subsequently, PWC was asked to provide a schedule of works, including costs for 100 and then 124 meters.
12. PWC were also asked by FaHCSIA to have authorisation/consent forms signed by indigenous communities for the commencement of installation of water meters.
13. By a letter on BCI letterhead dated 28 May 2008, the then President of BCI agreed to installation of the water meters on the following terms:

RE: PROJECT TO INSTALL INDIVIDUAL WATER METERS ON THE COMMUNITY ESTATE

I understand that FaHCSIA has provided funding to install individual water meters at a number of houses on various Darwin communities.

The diagram provided at the pre-visit indicates where the meters will be installed.

Power and Water Corporation will provide project management services to install the meters on behalf of the property owners.

Once installed the meters are the responsibility of the Community.

PAWA will still issue a single bill for water measured at the bulk water meter. The community is responsible for paying the bill by the due date.

The bill may be itemised with detail provided for individual house meter reads.

The Community is still responsible for all infrastructure including water pipes and meters on the properties.

I am authorised to represent the Community, and I understand the terms of this agreement and approve the project to proceed

14. On 28 May 2008, PWC waived a \$250,000 outstanding water debt owed by BCI, so that the Community could start with a zero balance account.
15. Stakeholder meetings were held to facilitate implementation. A meeting in January 2009 identified that not enough funds had been provided to complete all of the water meter projects. This was due to funding for sub-meters being incorrectly costed at \$1,000 each; rather than the actual cost of \$1,560 per meter.
16. At a stakeholder meeting on 27 January 2009, the earlier decision to waive the \$250,000 debt was discussed. The General Manager Retail PWC is recorded as stating that this amount of debt could not be written off again, 'as the cost of water would rise for all consumers'. It was noted that a Ministerial about BCI's debt had been lodged, and as the debt was again increasing, PWC would raise the issue with the NT Government.

17. Also at this meeting, a representative from YRHAC raised the issue of reading the newly installed sub-meters. Apparently, YRHAC was undertaking this function at the time. As they were not being funded to read sub-meters, YRHAC noted that this would become a more arduous task when further sub-meters were installed.
18. The issue of how to collect payments from individual householders was also raised. It was suggested that householders could 'sign up' to allow regular Centrepay deductions, to be paid against a specific customer ID number. Notably, payment mechanisms were to be put in place as soon as possible, to address the increasing unpaid debt.
19. PWC ultimately implemented a process where bills would be issued in the name of BCI but individual house meters would also be read and individual accounts provided for each metered house. Householders could then arrange for payment by regular Centrepay deductions or any other payment mechanism.
20. As noted above, even though it put this process in place, PWC has always maintained that the individual house sub-meters do not belong to it, and that it has no legal responsibility for their maintenance, or reading for invoicing. Its position is that BCI is responsible for all water charges but that it offsets any amounts recovered from individual householders to reduce the debt owed by BCI.

Events from 2009

21. There is little documented evidence of what transpired between 2009 and 2013.
22. PWC documentation shows that in 2010 another \$326,888 in BCI debt was 'written off' by PWC.
23. It also appears that YRHAC and Centrelink met with PWC in 2012 to discuss the format of householder's water bills. This meeting was intended to make it easier for clients wanting to pay towards their bills fortnightly, to use income management funds or Centrepay deductions.
24. It is clear that during this period BCI's debt continued to increase and was viewed with concern (for example, email from PWC Revenue Stream Manager dated 19 November 2012) but there was no demonstrable action taken to manage that debt.
25. In 2013, a number of Bagot Community members raised concerns with Centrelink about the way the PWC process was working from the perspective of individual householders. The Commonwealth Department of Prime Minister and Cabinet (PMC) and the Commonwealth Ombudsman both became involved before the issues were referred to the NT Ombudsman in August 2014. (The involvement of those bodies and the course of this investigation are described in more detail in Chapter 5.)
26. My Office then pursued investigations in relation to the concerns of individual householders and PWC's debt management practices regarding BCI and other indigenous communities.
27. PWC has pursued the debt it claims is owed by BCI and BCI has been put into administration, with one of its creditors being noted as PWC.
28. This report does not make any comment on the amount of any debt owed by BCI to PWC.

Chapter 2 - Rationale for individual billing and payments

29. In March 2015, information was received that since the NT Ombudsman began making inquiries, no water bills for individual houses had been received. PWC subsequently advised that this was due to technical errors.
30. However, on a number of occasions PWC representatives had suggested that billing for individual households would cease. Subsequent inquiries confirmed that PWC has ceased providing individual bills.
31. It is therefore important, before addressing concerns with the process that PWC had in place for billing and receiving payments from individual householders, to consider the rationale behind that approach. This discussion has application not only to Bagot Community but also to other indigenous communities.
32. PWC has stated throughout the investigation that it does business with land owners and collects charges from them. It says BCI is the landowner and its only legal relationship is with the landowner. One might then ask why PWC should do anything to accommodate individual tenants or householders within a community?
33. I discuss below a number of arguments that weigh strongly in favour of a process that recognises and requires/encourages payments from individual householders in an indigenous community. However, I preface my comments with the clear understanding that it is a matter for PWC and each indigenous community to consult over the best process for payment of charges in that community.
34. Arguments for individual billing include:
 - a. promoting individual financial accountability;
 - b. promoting efficient water use;
 - c. recognising special aspects of indigenous tenure;
 - d. maintaining parity with other group residential situations;
 - e. sound debt management;
 - f. compliance with community service obligations; and
 - g. PWC's role as a monopoly licence holder, government owned corporation and good corporate citizen.

Individual financial accountability

35. It is important for individual householders to be aware of the cost of the water they use. If you are the owner of an individual block, you pay for the water you use. If you are careful about water use, you can save money.
36. Individual responsibility rewards individuals who use water wisely. Individuals should have the capacity to save money by being water wise whether they live on a suburban block or in an Indigenous community.

Water efficiency

37. Promoting more efficient use of water is clearly a priority for PWC (see for example the Living Water Smart webpages promoted on its home page <http://www.livingwatersmart.com.au/>). As PWC puts it, *“The best, cheapest and easiest option to avoid costly new infrastructure to increase our water supply, is to reduce our use of it. Put simply, this means being more efficient with what we have.”*

38. These extracts from the website provide useful background:

Does our growing city impact on Darwin’s water use?

More and more people are choosing to live, work and invest in Darwin. This increasing population means increases in our water use.

In the last 15 years our population has increased dramatically and Darwin is getting to the stage where our water supply cannot keep up with demand.

Darwinites are used to high levels of water usage but with our growing population this cannot continue. Our current rate of water consumption is not sustainable.

...

How does our water use compare with other cities?

In Darwin we use more than twice the water per person than places with similar climates like Cairns. Cairns has a higher rainfall and larger population, but its water use per person is less than 60% of Darwin’s. The Cairns community has worked together to reduce water consumption, whilst in Darwin the amount of water we use is continuing to grow.

Fast Facts: *More than half the water consumed in Darwin is in homes, followed by the commercial and government sectors. About 75% of our household water use is outdoors, with most being used in the garden as well as being lost to leaks. Living Water Smart audits have so far revealed that almost one in two homes has a leak*

...

What’s the best way for Darwin to extend its water supply?

The Darwin region is now at a point where more water is required to keep up with the growing demand. The best, cheapest and easiest option to avoid costly new infrastructure to increase our water supply, is to reduce our use of it. Put simply, this means being more efficient with what we have. Ensuring our water supply is sustainable ensures we are planning for the future. It is easy to live water smart without changing or sacrificing your existing lifestyle – if you know how. Living Water Smart is here to help you.

39. Maintaining group billing in a residential context removes a significant incentive for efficient water use. In fact, it promotes excessive use with people who might otherwise be inclined to more efficient use being more likely to mirror the actions of others who are wasting water. If one person is running up the ‘corporate’ bill by excessive use, others may be more inclined to excessive use to make sure they do not ‘miss out’.

Special nature of indigenous land tenure arrangements

40. Indigenous community land tenure is generally based on group ownership, with all land and houses held in the name of one organisation. Group ownership of indigenous land no doubt has many attractions and advantages for indigenous community members in terms of maintaining their relationship with the land and familial and clan structures.
41. However, there are downsides even if a person has lived in the same house for many years. For example, accessing a loan can be problematic where a person does not 'own' a property that can be used as security. And, as is the case here, the individual householder does not have the opportunity to become an 'owner' for the purposes of the *Water Supply and Sewerage Services Act*.
42. It is important that agencies dealing with residents of indigenous communities do what they can to ensure that these householders operate as far as possible on a level playing field with other Territorians. This does not mean that every Territorian must be treated the same. Agencies must acknowledge and reasonably accommodate the wide diversity of circumstances in which Territorians live.
43. It is even more important when one considers the socio-economic status of many householders within indigenous communities. Agencies need to take all reasonable steps to help householders on low or minimal incomes to save every penny they can by increasing water efficiency and benefitting personally from that efficiency.
44. This form of land tenure is a special part of the Territory environment which should be recognised in the way organisations such as PWC deal with their consumers.

Parity with other group living arrangements

45. There already exist numerous body corporate arrangements where individual unit or householders pay directly for water services. The *Water Supply and Sewerage Services Act* makes it clear that individual unit owners in these cases are owners with whom PWC will have a direct relationship. For residential living, payments for individual households are the norm rather than the exception.
46. There is a strong argument that one class of householder should not be disadvantaged in its treatment by PWC because of land tenure arrangements.

Debt management

47. A PWC representative has suggested that it is simpler for it to have one customer, the landowner. There is a superficial attraction in having one entity to bill. However, this does not give adequate recognition to the other side of the equation. An arrangement which recognises individual householders means that payments can be gleaned from a large number of sources. This is particularly so when a significant number of those payments are made by way of regular deductions from Centrelink.
48. If householder debt is managed well, such an arrangement can be a valuable source of regular and ongoing debt payment.

Community Service Obligations

49. The NT Pensioner and Carer Concession Scheme provides discounts for, among other things, water services provided to qualifying pensioners and carers. PWC facilitates access to this scheme for its customers on behalf of the Department of Health (DOH), which administers the scheme. Eligible customers receive the concession on their bill. Eligibility is determined by DOH and the concession applied through an electronic interface between DOH and PWC that matches the name and addresses on PWC accounts with the DOH Pensioner and Carer database. PWC applies the concession to accounts and then seeks reimbursement from DOH.
50. PWC advises that *“mechanisms are available for customers eligible for pension and carer concession in single bill arrangements due to property ownership (Land Title). For example, individuals in property unit plans may liaise direct with DOH to receive concession on their water and sewerage charges.”*
51. A process that recognises individual household debt in indigenous communities is important to ensure that the scheme is equitably implemented so that government funds are spent effectively and no eligible beneficiary misses out on the relevant discount.

Monopoly licence holder, GOC, Good corporate citizen

52. As to paragraph 34g above, it is important to note that PWC is not in the same position as an ordinary business operating in a free market place. Firstly, it is a monopoly licence holder, the sole provider of an essential service. This monopoly position raises legal and ethical considerations. Likewise, PWC is a government owned corporation with responsibilities to Government shareholders and is subject to direction by Government.
53. But perhaps more fundamentally, it has a duty to be a good corporate citizen. It is incumbent on PWC to make accommodation for the users of its services, to recognise diversity and to ensure that users are treated fairly, with due consideration to individual circumstances.

Options for individual billing

54. There are various ways to cater for individual billing of households, for example:
- the system adopted by PWC and Bagot Community in 2009, whereby ultimate responsibility for the bill rests with BCI but individual accounts make it possible for individual householders to make payments in relation to their usage;
 - maintaining a single bill for the Community and having the Community or an organisation such as YHRAC collect money from individual households;
 - installing individual meters and creating a direct legal relationship between PWC and individual householders.
55. With regard to the latter option, my understanding is that PWC contends that it can only have a legal relationship with a land owner. While that may be PWC’s preferred position, my reading of the *Water Supply and Sewerage Services Act* would not suggest that a legal relationship with a non-land-owner consumer is precluded.⁴

⁴ Apart from a general reading of the Act, I note section 47(6) provides:

A licensee may enter into a special agreement with a person to provide water supply or sewerage services to the person on terms different to those provided for in the customer contract or relevant codes on receiving an application from the person.

56. Bearing in mind the above matters, I am strongly supportive of PWC maintaining a process that recognises individual householders and continues to collect payments directly from them.
57. However, I acknowledge that different communities may have differing views and preferred approaches. It is vital for community representatives to be involved in any development or review of processes. It is critical that Indigenous interpreters are utilised as required in any consultative or review process.
58. In the longer term, I believe that the NT Government and PWC, in consultation with representatives of relevant communities, should give careful consideration to whether the best approach is to provide PWC meters for individual houses and discrete billing for individual householders.

Chapter 3 – Issues with individual billing / payment process

59. This situation came to the attention of my Office in the context of concerns of individual householders. As noted above, PWC had a process in place for many years to provide billing information and allow payments from individual householders in the Bagot Community.

60. The process adopted by PWC in 2008-09 may be summarised as follows:

- a. PWC read individual sub-meters.
- b. PWC issued a bill for each sub-meter made out in the name of BCI, with BCI's 9 digit Customer ID Number. However, the bill also set out the house number, for example, "H 22", and a distinct 10 digit Master Consumer Number (MCN) for each metered house. Each bill also contained a distinct 17 digit Customer Reference Number (CRN). Bills were provided by PWC to BCI, not to individual householders.
- c. If a householder making a payment used the CRN, the payment could be attributed to the particular house. If instead, they used the BCI number, the payment would go towards the general BCI debt.
- d. Any overpayment or credit in relation to a particular house would be absorbed into BCI's debt by what PWC described as a '*transaction action*'.
- e. The 'notional' debt/credit was held against the house rather than the householder.

61. The concerns about the process from a householder perspective included:

- the payment process was sufficiently complicated that payments intended to be made towards a bill for a particular house were inadvertently being paid against the general BCI debt;
- any credits or excess amounts paid by householders were being attributed to the overall debt of BCI, resulting in the householder arguably contributing more than their fair share;
- debts owed in relation to a house remained with the house even if the householder moved, meaning that the new householder was paying off money against an old debt;
- some householders who had had a meter installed had not received a bill since the meters were installed;
- some houses had no meter installed.

Bills

62. Over the years, my Office has received complaints which suggest that interpretation of power and water bills is, to paraphrase, 'challenging'. The addition of further options for householders in an indigenous community has done nothing to simplify the situation.

63. Leaving aside phone numbers and PWC's ABN, each two page bill contains 6 distinct reference numbers ranging in length from 7 to 21 digits. The 9 digit BCI Customer ID is the most prominently displayed number, appearing three times. The bill itself does not expressly state which code a householder in Bagot Community must use to make a payment against their individual household debt. I am not aware of any initial or ongoing education or information offered to clarify the situation.

64. While I am certain that PWC had every good intention in developing a process that would allow individual householders to pay for their own household water consumption, the format of its bills is of limited assistance in achieving that goal.
65. Having said that, PWC has suggested that as few as four householders may have been impacted by use of the BCI Customer ID rather than the CRN.
66. Varying the form of its bills solely for the benefit of consumers in indigenous communities may be problematic. However, as discussed below, I do consider that PWC should review, in consultation with Bagot Community, the information and education provided to individual householders.

Treatment of credits /overpayments

67. In some cases, particularly where a person was contributing on a regular basis through Centrepay, a credit would build up before the next bill arrived.
68. However, credits or overpayments were being distributed by PWC to meet the overall BCI debt rather than being held for the benefit of the individual householder.
69. The issue was raised with PWC and remedied as of November 2014 so that payments made using the 17 digit CRN will not disperse to other accounts.

Debt held against house rather than individual

70. PWC has indicated that debts were held against the house rather than the individual householder. PWC says it is not in a position to identify or keep track of individual householders because they are not PWC customers.
71. This may mean that a householder coming into a house faces a debt that was built up before they arrived, even if they were up to date in their prior house. It may also mean that a credit built up in one house is not transferred if the householder shifts.
72. Ward Keller, acting on behalf of community members, provided detailed but de-identified examples of payments by individual householders. The most detailed example described two residents who moved into a house in October 2012. At that time, there was just under \$2,000 in 'water debt' owing in respect of the house. Both residents set up auto-deductions through Centrepay. Money paid by the residents went to payment of the 'prior debt' as well as their ongoing water use. Ward Keller submitted that the two residents made almost \$4,000 in payments in respect of water for the house up to August 2014. In Ward Keller's submission, this meant that the residents would be slightly over \$3,000 in credit if their payments were solely attributed to the cost of their water use.⁵
73. PWC has not had access to full details of this case that would allow it to verify the details provided by Ward Keller. While the figures may or may not be definitive, the case is nevertheless illustrative of the complexities and consequences that can arise when debt is attributed to a particular house rather than to individuals and PWC does not have direct access to details of individual householders.
74. This issue will only arise when there is a shift or transfer of householder. It is not known how frequently this occurs. For the future it could be resolved either by PWC recording debts against the names of householders (and requiring householders who shift to notify PWC or continue to be billed) or by regular reconciliations conducted by agreement between PWC and BCI.

⁵ Ward Keller also raised issues relating to the calculation of the stated debt in this case.

75. For past debts, it could be resolved by the Bagot Community providing PWC detailed information on householder movements and PWC utilising the information to conduct a reconciliation. Whether this is necessary or practical will depend on the availability of such information and extent of cases where this is likely to have occurred.
76. Another option for past debts would be to notify householders that they can approach BCI or PWC if they think they may have been disadvantaged because of a shift. If they can provide sufficient detail and evidence on timing of a move this may allow a reconciliation to be undertaken in the particular case.
77. It is important for PWC to liaise with BCI to establish the best way forward. In relation to the examples provided by Ward Keller referred to in paragraph 72 above, I will request that it provide details that will identify the individual householders so that PWC can appropriately deal with those cases.

Reconciliations

78. PWC has indicated that it is willing to assist with a reconciliation but maintains that it does not have access to detailed information about movements within the Community, so the onus is on BCI. It stresses that it does not have a relationship with individual house holders.
79. It has suggested that reconciliation would be difficult because of the transient nature of the community. It has also noted that while reconciliation may reduce the notional debt of some Community members, it is likely to increase the notional debt of other Community members and the actual debt of BCI if some payments must be re-credited or re-paid.
80. It has also suggested that a reconciliation is contingent on finalising arrangements with BCI for the payment of its outstanding debt.
81. In the meantime, individual householders who have paid more than their fair share are left out of pocket.
82. I accept that resolution of overpayments will require co-operation from BCI and possibly YHRAC. However, whatever dispute PWC may have with BCI, PWC has accepted money from individuals who have paid it money in good faith to cover the costs of their own water use.
83. Perhaps some householders may have been aware of an arrangement between PWC and BCI. I suspect many were not aware of the arrangement or at least of the detail of it. There is nothing in the material PWC has provided to show the contrary.
84. It appears to me that the individual householders who contributed payments to PWC had a reasonable expectation that their payments would be attributed for the benefit of the households they were in, and that likewise any credit would be attributed to their benefit or re-paid.
85. Regardless of any relationship with BCI, PWC has a relationship with, and responsibilities to, the individual householders who have paid it money. It is important that PWC does all it can to move to resolve the issue of credits / overpayments to ensure that these individuals are not unfairly treated.
86. Ward Keller, acting for a number of Community residents, submitted that I should make recommendations that forensic auditing and accounting be commissioned in this regard and that findings be distributed to all stakeholders.

87. In this context, PWC stated:

Power and Water denies any legal obligation to refund Community residents who may have made payments into BCI's water account. ... Power and Water has provided the relevant information to BCI and no further audits of Power and Water information are required. Further, Power and Water has offered to work with BCI to discuss any concerns or confusion relating to information supplied to BCI. To progress the matter further, Power and Water requires BCI to provide details of Community residents' periods of residence in each house in Bagot Community. It may be that this is where the audit should be focussed, although it is a matter for BCI. Power and Water will endeavour to work with BCI to reconcile Centrelink payments with resident movements.

88. The ongoing legal dispute between PWC and BCI is a significant complicating factor. As noted above, it is important for PWC to resolve these issues in the interests of individuals who have paid it money.

89. Beyond those comments, it is a matter for PWC as to the manner in which it manages the ongoing legal dispute and I do not propose to make the specific recommendations suggested by Ward Keller.

Information and Education

90. The investigation disclosed little to show what information or education had been provided to individual householders about how the process would work and their responsibilities and options under it.

91. Whatever form the process may take in the future, it is important that all householders receive substantive education and information about the process and their part in it. It is imperative that such information is delivered in consultation with Indigenous interpreters to ensure that a clear understanding is achieved and that potential language barriers are addressed.

No bill / No meter

92. Two households advised that they had meters but had not been billed since the meters were installed.

93. There are a variety of reasons why meters may not be read. They may be covered, obscured or damaged. They may never have been identified as requiring reading. I note that PWC has taken no responsibility for the maintenance of the individual meters. If they are working and easily accessible, the simple solution would be for BCI to advise PWC of their location.

94. Our investigation disclosed that five houses are not metered. This means there is no accurate basis for assessing their water usage and attendant contribution to water payments. PWC suggested that this was a matter for the Bagot Community.

95. Again, it is important to note that PWC has taken no responsibility for installation or maintenance of meters. PWC has indicated that a number of meters are now damaged or otherwise unreadable.

96. This should be a matter for discussion between PWC, BCI and the NT Government as part of long term planning for future of water supply arrangements in the Community.

Maintaining individual billing and payments

97. The above issues are matters that require resolution to ensure that the PWC process works well and in the interests of PWC and individual householders.
98. They are not reasons for PWC to step back from a process which it has implemented in co-operation with the NT and Commonwealth Governments and the Bagot Community for the benefit of individual householders.

Chapter 4 - Management of BCI and other community debt

BCI debt

99. Information from PWC suggests that the debt owed by BCI at 1 September 2015 stood at approximately \$700,000. It would appear that BCI may dispute that amount. The Community members represented by Ward Keller certainly do. While it is incumbent on PWC to provide detail to support this debt, it is not within the scope of this report to undertake any assessment of the level of debt.
100. This chapter will discuss a number of issues relating to PWC's approach to debt management.
101. Of course, BCI has a responsibility to pay its debts as does every customer who uses water services. However, PWC also has a responsibility to have robust but flexible processes in place to manage debt, particularly substantial debt.
102. The following excerpts from the PWC *Credit and Debt Management Policy* (issued in February 2008) are relevant:

Effective credit control helps to optimise the financial management of the Corporation and minimises the risk to the Corporation of bad debt.

...

2.1 Responsibility to Act Commercially

The Corporation has a responsibility to recover monies owing to it in a timely and efficient manner to finance its operations and ensure effective cash flow management.

...

The Corporation will operate effective billing and debt collection processes including the efficient management of accounts receivable and related credit management.

2.2 Accountability and Transparency

The Corporation's practices and decisions are underpinned by accountability and transparency and must accord with the requirements and intent of relevant legislation and accepted conventions.

Policy and Procedure internal audit controls will be implemented and monitored.

2.3 Fairness and Equity

The Corporation will ensure that credit (and related debts) are managed fairly and equitably. This Policy maintains that parties who incur sundry debts do so in full expectation of meeting the repayment terms prescribed.

The Corporation also acknowledges that organisation and individual financial circumstances can change. If difficulties are anticipated, individuals and organisations must promptly initiate discussions seeking alternative arrangements. The Corporation will act in accordance with its Financial Hardship Policy.

...

3.1 Debt Management

The Corporation will take appropriate action to recover outstanding debt.

Debt collection practices (consistent with commercial business practices) will be applied.

The following steps will be generally used for debt recovery:-

- *after 23 Days issued with a courtesy notification requesting payment within 7 days;*
- *after 30 Days a “Will Disconnect” letter is issued to give notice of disconnection of electricity or that a water restrictor will be applied if not paid in 7 days;*
- *water restrictor or electricity disconnection takes place if account remains unpaid;*
- *Water & Sewerage Accounts if they remain unpaid are also sent legal at the same time a restrictor is applied;*
- *ceased accounts are issued a “May Send Legal” letter on 30 Days outstanding;*
- *ceased accounts are issued a “Will Send Legal” letter on 37 days outstanding.*

103. The steps taken to manage debt will never be one size fits all. They must be tailored to fit the particular circumstances and will not necessarily follow precisely the course or timelines set out in clause 3.1 above.
104. In all likelihood they will involve a series of escalating steps over time. Legal action would usually be an option of last resort, if it is considered at all. However, it is important to develop or at least pursue a strategy for payment that is achievable by the consumer and meets reasonable timelines.
105. The information provided to my Office does not disclose substantive or timely action by PWC to manage or recover the debt, which simply escalated over time. Write-offs were undertaken in 2008 (\$250,000) and 2010 (\$326,888) but the debt continued to accumulate. There does not appear to have been any agreed plan or arrangement for regular payments and monitoring to ensure that the situation did not deteriorate.
106. Again, it is important to note that there are two sides to any debt. BCI is obliged to pay its debts. However, PWC could clearly have done more to manage the debt. Close attention may well have helped to avoid the current situation where a very substantial claimed debt is having a major impact on BCI.
107. It is important that PWC review its debt management practices to ensure that substantial debt issues are approached with consideration and flexibility but actioned in a timely manner and closely monitored to ensure solutions are working.

Indigenous community debt

108. The BCI debt is not a one-off situation. PWC records indicate that there are a number of indigenous communities where substantial debts have built up and/or been written off. In total, these debts substantially exceed the debt which PWC contends is owed by BCI⁶.
109. This is a situation that cannot be allowed to persist. PWC must address it in consultation with the NT Government and relevant indigenous stakeholders.

⁶ These include debts for water, sewerage and electricity supply.

110. The amount of debt owed from community to community varies significantly and again there is not necessarily a single solution or approach.
111. However, these are issues that must be addressed now in consultation with communities. Solutions must be developed, agreed and implemented on an ongoing basis to ensure the highest standard of debt management by PWC and the proper financial management of the communities concerned.

Chapter 5 - Complaint and report process

112. Concerns about PWC billing and payment processes were first raised with Commonwealth agencies.
113. A number of individual payments were being made through Centrepay deductions. It was noted that a number of these accounts came to be in credit by the time each new PWC bill arrived. However, those credits seemed to disappear. The problem of 'disappearing' credits was raised with Centrelink in 2013.
114. The Department of the Prime Minister and Cabinet (PMC) then became involved and took a lead role. It had contact with various stakeholders between January and May 2014.
115. The Commonwealth Ombudsman next became involved as both Centrelink and PMC fall within its jurisdiction. Ultimately, the Commonwealth Ombudsman raised the matter with the NT Ombudsman because of the involvement of PWC.

Issues raised with NT Ombudsman Office

116. On 6 August 2014, the Commonwealth Ombudsman referred a complaint from a Bagot resident to my Office, noting some similarities to issues raised by residents of two other indigenous communities in complaints the Commonwealth Ombudsman had referred to my Office on 23 June 2014.
117. In late August 2014, the NT Assistant Ombudsman met with members of the Bagot Community, and the Community's representatives/advocates to gain a better understanding of complaint issues. One community representative advised that despite meeting with the YRHAC and Centrelink staff that *everyone* within the Community remained '*really confused and worried*'.
118. This meeting was supplemented by further information from PMC supplied on 4 September 2014.
119. My Office was contacted by the Darwin Community Legal Centre on 20 October 2014 to advise that it was obtaining instructions from a number of Bagot Community clients. Written authorities to act for a number of residents were provided on 27 November 2014.
120. My Office undertook further preliminary inquiries while encouraging PWC to work with members of the Bagot Community to explore resolution of the issues.
121. At the conclusion of preliminary inquiries, the Deputy Ombudsman prepared a detailed report on those preliminary inquiries and I decided to commence an 'own initiative' investigation under section 14(1)(b) of the *Ombudsman Act*.
122. I notified the Chief Executive of PWC accordingly by letter dated 7 May 2015 which enclosed a copy of the preliminary report. I also notified the Minister for Essential Services that I was commencing an investigation.
123. My Office then obtained further information from PWC and other stakeholders.
124. While investigations were ongoing, PWC was encouraged to meet with Bagot Community representatives to explore resolution of the issues. PWC representatives met with BCI and YRHAC representatives on a number of occasions. However, a considerable proportion of these meetings were taken up with disputes about the extent of the debt owed by BCI.

125. In the latter part of the investigation, my Office was contacted by Ward Keller, acting on behalf of Community residents.

Consultation

126. A draft report was prepared and distributed to:
- PWC;
 - the Administrator for BCI;
 - YRHAC;
 - Ward Keller, acting on behalf of residents of the Bagot Community, including members of the management committee of BCI; and
 - the Department of Local Government and Community Services.
127. Substantive responses were received from PWC and Ward Keller. A further response on some matters was then sought from PWC. The responses have been considered in the development of the final report. They are discussed below and references are incorporated elsewhere in the report where appropriate.
128. PWC addressed each draft recommendation in turn. In relation to Recommendation 1 regarding reconciliation and repayment to individual householders, PWC indicated that it is *“happy to take reasonable steps to facilitate monetary corrections to householders”*. It reiterated its position that it dealt solely with BCI, noting that it always dealt with BCI and never sent bills to individual householders and stating that *“Centrelink payments were initiated and managed by BCI and [PWC] had no knowledge of who was living in the community”*.
129. PWC pointed to efforts by it to engage with BCI regarding this issue and stated that to *“enable reconciliation, a detailed list of tenants, including the duration (start and end dates) of residence in houses is necessary”*. It submitted that the recommendation be amended but did not specify how it should be amended.
130. While the thrust of the recommendation remains the same, I have amended it slightly to recognise the need for co-operation from BCI or possibly from individual householders. The ongoing legal dispute clearly complicates the resolution of this issue.
131. Recommendation 2 relates to reinstatement of a process for individual payments. PWC states that it is *“happy to progress discussions with the administrators, BCI and NT Government, however [PWC] does not accept sole responsibility for achieving that outcome.”*
132. PWC pointed to issues that would need to be considered, including significant infrastructure upgrades and some form of subtitle or strata title arrangements that would provide a legal basis to administer the scheme. It stated that it is bound by relevant legislation and *“seeks to ensure that any process has a legal basis and does not lead to future challenges”*. It, however, indicated that it *“is happy to initiate discussion with the administrators and the NTG around a process that would see individuals making payments for water use.”* It again submitted that the recommendation be amended but did not specify how it should be amended.
133. I acknowledge that PWC is only one part the solution. However, it is important that it play a lead role in developing a solution and that it be open to a range of initiatives, in the short and long term. PWC has been party to a solution that has been in place for a number of years.

That process had its flaws, as this report notes. That does not mean PWC cannot adopt a short to medium term solution, improved from the experience of those years, while longer term solutions are developed.

134. PWC, the NT Government and community members all have a role to play in the development of short term and long term solutions. I believe the draft recommendation accurately reflects this and I do not consider it requires amendment.
135. Recommendation 3 provides that PWC and the NT Government undertake wide-ranging consultations regarding the best approaches to recognising and facilitating individual householder payments in the future. PWC states that *“it is willing to be part of this proposed recommendation, noting that to facilitate some options infrastructure and other legal amendments may be required outside [PWC’s] responsibility and control. NTG is considered best place to drive this recommendation”*. PWC submits that the recommendation be amended but does not specify how it should be amended.
136. I acknowledge that NTG will play a crucial role in driving this recommendation. I have amended the draft recommendation by placing the NT Government first. However, PWC will play a crucial role and must be committed to substantial involvement.
137. PWC’s responses in relation to Recommendations 4 to 6 were:
 - *4. Review of management of current debt – “[PWC] is currently engaging collaboratively with Indigenous communities to work through any outstanding debt”;*
 - *5. Use of Indigenous interpreters – “[PWC] will continue to ensure interpreter services are available to all customers”;*
 - *6. Review of debt management practices – “[PWC] has reviewed its processes to ensure appropriate mechanisms are in place to work with all customers to ensure timely debt management”.*
138. The Administrator for BCI did not make substantive submissions but has provided copies of brief correspondence between it and PWC (and its lawyers) relating to the potential for PWC to invoice tenants of residential housing and common areas directly.
139. Ward Keller provided very detailed submissions which it summarised as follows:

Our clients believe that the Draft Report identifies substantive problems caused and created by PWC.

Chapter 2 in the Draft Report lists a number of policy rationales to explain why billing of water should be to each individual or resident user. This policy analysis is obviously correct and our clients generally agree with your arguments for individual billing, as listed at paragraph 34 of the Draft Report.

However, it is a fundamental failing of the Draft Report not to investigate and make conclusions on the substantive issues at the core of the dispute between BCI and PWC including:

 - A. *individual water users at Bagot (being residents and service providers) are legally responsible for their water use and charges, not BCI;*
 - B. *PWC’s neglect of meters at Bagot which has resulted in PWC breaching its metering code, and possibly breaching its water services supply licence and statutory responsibilities;*

- C. *the incomprehensible bulk meter readings at Bagot and the need for all water charges arising from such readings to be waived or disregarded;*
- D. *billing practices at Bagot, including:*
 - a. *residents assuming debts and having their credits misappropriated;*
 - b. *appropriated credits then being allocated to other purported 'debts';*
 - c. *the accounting practices used with respect to Bagot residents;*
- E. *PWC's use of Centrepay and whether such use complied with the terms of use of Centrepay, and whether the Commonwealth Department of Human Services has been informed of PWC's accounting practices and use of Centrelink payments;*
- F. *Concerns for the consumer rights of BCI and Bagot residents, and basic legal issues arising in this dispute.*

This submission addresses each of the above points.

Further Recommendations

This submission further considers recommendations we believe should be included in the Draft Report, being:

- *Each person who receives water services for final consumption is a customer of PWC. Each Bagot resident or building occupier is a separate customer of PWC, liable to pay water charges such person or occupier incurs.*
- *PWC owns and is responsible for all water meters at Bagot.*
- *PWC's neglect of water meters is to be referred to the Utilities Commission for investigation with respect to potential breaches of the Water Metering Code, their Licence, and section 43 of the Act.*
- *Noting that:*
 - *PWC owns and has the responsibility to maintain meters at Bagot;*
 - *PWC has denied such ownership and responsibility, causing meters to fall into disrepair;*
 - *PWC has charged extreme sums for water use recorded through unreliable meters;*

the Draft Report recommends that:

- *all water charges arising from the bulk meter, or a purported difference between the bulk meter and the individual meters, should be waived or disregarded;*
- *any monies paid in respect of the above charges should be reallocated to residents who paid such amounts; and*
- *PWC is to remove the bulk meter and rely on individual metering.*
- *Forensic auditing and accounting is to be commissioned to identify all persons who:*
 - *inherited a water debt that was not theirs;*
 - *had credits appropriated by PWC;**and such funds are to be returned to such persons.*

- *The findings of the forensic auditing and accounting are to be distributed to all stakeholders and PWC is to issue apologies to affected persons.*
 - *The forensic auditing and accounting is to refer any such matters as are considered relevant to law enforcement agencies.*
 - *PWC's billing and debt management practices are to be advised to DHS and the Commonwealth Ombudsman.*
 - *PWC is to provide a copy of its Centrepay contract to the NT Ombudsman within 7 days of this report.*
 - *The CEO of PWC is to advise within 14 days of this report how PWC complied with the terms of use of Centrepay with respect to the individual Centrelink recipients residing at Bagot.*
 - *PWC's purported reliance on the Customer Contract to seek legal recourse solely against BCI is to be referred to NT Consumer Affairs for investigation under the Australian Consumer Law.*
 - *PWC is to advise within 14 days of this report how the decision to initiate a threat of legal action was made by PWC and or the NT Government.*
140. The Ward Keller submission attached a copy of a letter from Clayton Utz (acting on behalf of PWC) to BCI dated 24 September 2015, providing details of its claims for the purposes of Supreme Court *Practice Direction 6 of 2009* relating to the commencement of civil proceedings.
141. Many of the submissions made by Ward Keller are aimed at persuading me to undertake further investigations into the precise circumstances of the matters in legal dispute between PWC and BCI. I do not propose to do so. Beyond the matters I have discussed in the Report, I do not have the capacity to investigate all the matters in dispute and there would be little value in my expressing opinions on matters of legal interpretation which are at the crux of the legal dispute.
142. I have nevertheless included some information from the Ward Keller submission in the body of the Report and comment below on a number of points raised.
143. One point firmly pressed by Ward Keller was that, despite the PWC assertion that its only legal relationship was with BCI, the legal and regulatory context meant that PWC in fact had legal obligations to every person who receives water. Ward Keller stated:
- The correct legal position, therefore, is that every person who receives water services for final consumption at Bagot is a separate customer of PWC. Final consumption at Bagot obviously takes place at each residence or at each building. This final consumption is monitored by meters which PWC regularly reads and which have unique Master Consumer Numbers. This means that every resident and service provider is a customer of PWC. BCI is not the sole customer for CLP840.*
144. I am not convinced that the relevant provisions mandate that PWC must have a legal relationship with every person who receives water. I consider that there is some flexibility in the approaches that can be adopted. In that regard, my reading of the provisions falls somewhere between the above interpretation and PWC's contention that its legal relationships must be with a land owner. Of course, it is open to BCI and PWC to advance any reasonable interpretation in the course of the legal dispute, should they choose to do so.

145. Ward Keller further submitted that the meters installed within the Community must be the property of PWC and that it must be responsible for them. It submitted that the letter quoted at paragraph 13 above is not addressed to PWC and is not “an agreement or contract with PWC”. It contends that the provisions of the *Water Supply and Sewerage Services Act* must lead to the conclusion that each meter in the Community is owned by PWC and PWC is responsible for the upkeep of meters. On that basis, it submitted that PWC may have breached the *Water Metering Code* and the Act and should be referred to the Utilities Commission.
146. I am not immediately convinced by these submissions but I do not consider it necessary to express any concluded opinion on them for the purposes of this Report. These are matters which a relevant party may wish to pursue with the Utilities Commission or in the course of the legal dispute.
147. Ward Keller also raised issues concerning compliance by PWC with its contract with Centrelink. Ward Keller did not have access to a copy of the contract but referred to Centrelink’s standard terms, suggesting that PWC’s practices in relation to individual householders would be contrary to those terms. Ward Keller submitted that I should obtain a copy of the PWC/Centrelink contract and that I should require PWC to explain how its actions are in compliance with that contract.
148. The body best placed to consider whether the actions of PWC have been in compliance with any agreement with Centrelink and what, if any, action should be taken in that regard, is Centrelink. I will forward a copy of my Report, and the relevant submissions of Ward Keller, to Centrelink for its consideration.
149. Ward Keller submitted that PWC’s actions in seeking legal recourse solely against BCI may also be in breach of the *Australian Consumer Law* and should be referred to NT Consumer Affairs. It also submitted that I recommend that PWC advise how its decision to initiate a threat of legal action was made.
150. It is open to BCI or Community members to make a complaint to NT Consumer Affairs or to any other body referred to in Ward Keller’s submissions. It is open to BCI to raise any relevant issues in the course of the ongoing legal dispute. I do not propose to address those issues further in this Report.
151. As noted at paragraphs 42-44 of the Overview, PWC objected to discussion of submissions made by Ward Keller in this report. In addition to the comments quoted there, PWC submitted:

In general, these submissions make allegations regarding actions of Power and Water primarily relating to the current legal dispute and compliance with various laws and contracts. Neither Ward Keller nor Community residents have approached Power and Water to raise the allegations or give Power and Water an opportunity to consider and respond to the merit of the allegations. Power and Water considers that the Ombudsman Investigation Report is not the appropriate vehicle for these allegations to be raised nor for Power and Water to respond to the allegations.

Section 16(2) of the Ombudsman Act provides that the Ombudsman must not investigate administrative action of a public authority for which there is a review right under the law under which the action was taken unless certain conditions apply. While this section does not apply directly to the allegations made by Ward Keller, the intent of the provision is relevant where the allegations have not been raised with Power and Water. For each allegation made by Ward Keller there is a mechanism for seeking review or legal remedy.

Examples are listed in the revised draft report, where you have noted that certain matters alleged could be pursued with the Utilities Commission, Centrelink, or NT Consumer Affairs. Whilst Power and Water asks for removal of paragraph [141] your comments are acknowledged that there would be little value in expressing opinions on the matters subject to legal dispute between the parties.

Power and Water considers that submissions by Ward Keller which relate to the legal dispute with Power and Water or allege unlawful conduct or breach of contract by Power and Water are not relevant to the report and should not be summarised in the report. Power and Water is concerned that publishing the allegations in an Ombudsman Investigation Report:

- a. is prejudicial to Power and Water, particularly where Power and Water has not had the opportunity to respond to these allegations;*
- b. risks that stakeholders reading the report will give undue weighting to the allegations; and*
- c. is detrimental to Power and Water's reputation in circumstances where there is no need or value in publishing the allegations.*

...

It is not appropriate for Power and Water to address the merits of Ward Keller's allegations in this response - these matters should be dealt with either through discussion between Power and Water and Community residents (or Ward Keller) or through the review process relevant to each allegation. However, Power and Water notes its concerns regarding the validity and merit of all allegations.

152. I acknowledge that the finalisation of the report takes place in the context of an ongoing legal dispute. The resolution of the dispute is a matter for the parties. Briefly recording and discussing submissions of a stakeholder does not amount to endorsement or acceptance of those submissions.
153. PWC refers to section 16(2) of the *Ombudsman Act*. PWC does not submit that it would preclude me from dealing with any of the matters raised by Ward Keller and I do not consider that it would do so. The provision gives me a broad discretion to investigate even in cases where there is a review right.
154. With regard to the final paragraph quoted above, I have not called on PWC to address the merits of Ward Keller's submissions for the purposes of this report. Given the approach I have explained above, I have not considered it necessary to do so.
155. Again, I note that my primary reason for discussing the submissions made by Ward Keller has been to explain why I have chosen not to incorporate a large number of recommendations proposed on behalf of community members. I consider it appropriate to briefly set out my reasons in the circumstances.
