



# Subsequent Determination

## Subsequent Determination to vary the 2013-2017 Price Determination for Minor and Intermediate Retailers

To apply from 1 July 2017

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# 1 General

## 1.1 Authority

- 1.1.1 The **Price Determination** has been made pursuant to the price determination powers of the **Commission** under Part 3 of the Essential Services Commission Act 2002 as authorised by Part 4, Division 3 of the Water Industry Act 2012.
- 1.1.2 Pursuant to section 26(8) of the Essential Services Commission Act 2002, the **Commission** can vary the **Price Determination** by subsequent determination.

## 1.2 Term

- 1.2.1 This subsequent determination has effect for the period from 1 July 2017 up to and including 30 June 2018.

## 1.3 Application

- 1.3.1 This subsequent determination varies the **Price Determination**, which applies to all **licensees** (unless otherwise determined by the **Commission**).

## 1.4 Definitions and interpretation

- 1.4.1 In this subsequent determination words appearing in bold like **this** have the following meaning:

<b>Commission</b>	means the Essential Services Commission, a statutory body established under the Essential Services Commission Act 2002
<b>Inquiry</b>	means the <b>Commission's</b> inquiry into regulatory arrangements for small-scale and off-grid water, sewerage, gas and electricity services
<b>licensee</b>	means the holder of a licence issued by the <b>Commission</b> under the Water Industry Act 2012 authorising the provision of <b>retail services</b> , other than the South Australian Water Corporation established under the South Australian Water Corporation Act 1994
<b>National Water Initiative Pricing Principles</b>	means the National Water Initiative pricing principles published by the National Water Commission
<b>Price Determination</b>	means the price determination for minor and intermediate retailers which regulates conditions relating to prices for <b>retail services</b> provided by <b>licensees</b> , made by the <b>Commission</b> pursuant to Part 3 of the Essential Services Commission Act 2002 and the Essential Service Commission Regulations 2004, as authorised by Part 4, Division 3 of the Water Industry Act 2012



retail services	has the same meaning as is given to that term in the Water Industry Act 2012
sewerage services	has the same meaning as is given to that term in the Water Industry Act 2012
water services	has the same meaning as is given to that term in the Water Industry Act 2012

- 1.4.2 In this subsequent determination, unless the context otherwise requires:
- (a) headings and footnotes are for convenience or information only and do not affect the interpretation of this subsequent determination
  - (b) words importing the singular include the plural and vice versa
  - (c) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa
  - (d) a reference to a clause or appendix is to a clause or appendix of this subsequent determination or the **Price Determination**
  - (e) a reference to any statute includes all statutes varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute
  - (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document of that provision of that document, and
  - (g) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.

## 2 Determination

### 2.1 Statement of Reasons

- 2.1.1 In June 2013, the **Commission** made its first **Price Determination** to apply to **licensees** for the period 1 July 2013 up to and including 30 June 2017. In making the **Price Determination**, the **Commission** had regard to the factors set out in section 25(4) of the Essential Services Commission Act 2002 and Part 4 of the Water Industry Act 2012.<sup>1</sup>
- 2.1.2 The **Price Determination** requires **licensees** to comply with the **National Water Initiative Pricing Principles** when charging for the supply of **water services** and **sewerage services** and to report to the **Commission** on how this requirement is complied with.<sup>2</sup>
- 2.1.3 The **Commission** considered that the **Price Determination** was required for the following key reasons:
- 2.1.3.1 To establish a clear understanding of pricing issues applicable to **water services** and **sewerage services** by ensuring that prices for these **retail services** were made transparent to customers and to the **Commission**.
- 2.1.3.2 To recognise that, while many **licensees** were implementing reforms to enable the full recovery of efficient costs associated with the provision of **retail services**, some **licensees** were finding this transition a challenge.
- 2.1.4 In August 2016, the **Commission** commenced the **Inquiry**, under which it is reviewing the regulatory framework that applies to **licensees**. One of the key areas being considered as part of the **Inquiry** is the form of price regulation to be applied to **licensees**.
- 2.1.5 In May 2017, the **Commission** released a draft subsequent determination proposing to vary the term of the **Price Determination** by extending it for a further 12 months, to 30 June 2018. The **Commission** proposed this extension to allow it to undertake public consultation on proposed changes to the current regulatory framework identified through the **Inquiry** process beyond 30 June 2017, and assist with the smooth transition to any adopted changes taking effect.
- 2.1.6 In addition, the **Commission** considers that there have been no material changes to market conditions that justify the cessation of price regulation by the **Commission** all together. Accordingly, the reasons for the making of the **Price Determination** remain relevant.
- 2.1.7 The draft subsequent determination also proposed a variation to the reporting requirements set out in the **Price Determination**. Specifically, it proposed reducing the prescriptive nature of the reporting requirements set out in clause 2.3.1 of the **Price Determination**.

<sup>1</sup> The **Price Determination** and the statement of reasons for the making of it are set out in the **Commission's** final decision in relation to the Economic Regulation of Intermediate and Minor Retailers of Water and Sewerage Services, <http://www.escosa.sa.gov.au/projects-and-publications/projects/water/economic-regulation-of-minor-and-intermediate-water-retailers>.

<sup>2</sup> While the **National Water Initiative Pricing Principles** do not expressly apply to **sewerage services**, in making the **Price Determination**, the **Commission** considered consistency in price regulation between all **retail services** be promoted where practicable and that **sewerage services** be treated in a like manner to **water services** for the term of the **Price Determination**.



- 2.1.8 This variation was proposed as, while the **Commission** considers licensees should be able to demonstrate compliance with the **National Water Initiative Pricing Principles** by reporting to the **Commission** to that effect, the detail around reporting requirements is more appropriately specified in one of the **Commission's** industry guidelines, rather than in the **Price Determination** itself.<sup>3</sup>
- 2.1.9 In response to the release of the draft subsequent determination for public consultation, the **Commission** received three submissions from:
- 2.1.9.1 Corporation of the City of Whyalla
- 2.1.9.2 City of Port Lincoln, and
- 2.1.9.3 City of Tea Tree Gully.
- 2.1.10 All submissions supported the **Commission's** proposal to extend the term of the **Price Determination** for a further 12 months, to 30 June 2018. However, the Corporation of the City of Whyalla and City of Tea Tree Gully raised concerns regarding the proposed replacement of the clause dealing with reporting requirements. In particular, it was submitted that the removal of the defined reporting requirements and reporting date (and its replacement with an obligation that gives discretion on these matters to the **Commission**) could create uncertainty for retailers and impact upon established systems already set up to comply with current requirements.
- 2.1.11 The variation to the reporting requirements of the **Price Determination** was proposed so the detailed aspects of the requirements could be specified in the **Commission's** Water Industry Guideline No.3, rather than in the **Price Determination**. These requirements are more appropriately contained in a guideline so they are accompanied by guidance materials and, if amendment to the requirements is ever required, there is a more streamlined amendment process. The **Commission** had no intention to change the nature of the current reporting requirements for the 12 month extension period.
- 2.1.12 Notwithstanding the above, the **Commission** is keen to mitigate any confusion around reporting requirements in the **Price Determination** and ensure ongoing discussions with licensees regarding the **Inquiry** focus on proposed changes to apply in the next regulatory period (rather than on issues relevant to interim measures). Accordingly, having considered the issues raised in the submissions to the variations proposed to the **Price Determination**, the **Commission's** final decision is as follows:
- 2.1.12.1 Having regard to the reasons outlined in paragraphs 2.1.5 and 2.1.6 of this statement of reasons, and considering there is stakeholder support for this variation, the term of the **Price Determination** will be extended for a further 12 months, to 30 June 2018.
- 2.1.12.2 Having considered the concerns of stakeholders, and the views of the **Commission**, which are outlined in paragraphs 2.1.10 to 2.1.12 of this statement of reasons, the current wording of the reporting requirements set out in the **Price Determination** will be not be varied.

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<sup>3</sup> The **Commission** has made Water Industry Guideline No. 3 – Water Regulatory Information Requirements for Minor and Intermediate Retailers which currently applies to licensees.

## 2.2 Variation

- 2.2.1 From the date this subsequent determination takes effect, the following clause of the Price Determination is varied as follows:

Clause 1.2.1

*"1.2.1 This **determination** has effect for the period from 1 July 2013 up to and including 30 June 2018. "*

## 2.3 Limitation of variation

- 2.3.1 For the avoidance of doubt, in all other respects, the terms of the Price Determination are confirmed.



This subsequent determination was made by the Commission on 21 June 2017 pursuant to Part 3 of the Essential Services Commission Act 2002 as authorised by Part 4, Division 3 of the Water Industry Act 2012.

The COMMON SEAL of )  
the ESSENTIAL SERVICES )  
COMMISSION of South )  
Australia was hereunto affixed )  
by authority of the ESSENTIAL )  
SERVICES COMMISSION and )  
in the presence of: )



Paul Rine

Commissioner

21 June 2017

Date



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