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Lodged online: www.escosa.sa.gov.au

Dear Mr Wilson,

RE: Submission on the Consumer Experts Panel Background Briefing: Review of the Water Retail Code – Major Retailers

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (**SACOSS**) has an established history of interest, engagement and provision of advice on the necessary market mechanisms and policy for essential services, including water. It has been well documented by SACOSS and others that the cost and supply of basic necessities like water have significant and disproportionately greater impacts on low income and vulnerable people. SACOSS' advocacy is informed by our members and direct consultations with consumers and other consumer organisations: organisations and individuals who witness and experience these impacts in our community.

SACOSS would like to thank the Essential Services Commission of South Australia (**ESCOSA**) for the opportunity to provide our early views on the review of the Water Retail Code – Major Retailers (**the Code**). As noted by ESCOSA, 'the Code is the principal consumer protection document for SA Water, setting out the behavioural standards and minimum requirements that SA Water must comply with in the sale and supply of water and sewerage retail services',¹ and is therefore of significant importance to vulnerable water consumers in South Australia.

ESCOSA's Consumer Experts Panel – Background Briefing (**the Briefing**) identifies five areas for potential improvements to the Code, which will form the focus areas for the Review (subject to feedback from the Consumer Experts Panel). These initial areas of focus are:

- Communication requirements
- Billing and accounts
- Hardship provisions
- Family Violence Provisions
- Service Standards

¹ The Essential Services Commission of South Australia, SA Water RD20, Consumer Experts Panel – Background Briefing: Review of the Water Retail Code – Major Retailers, June 2019, p. 2

SACOSS has some broad comments in relation to each of these areas, but we also have some specific comments we would like to make in relation to reviewing the definitions section of the Code. We believe reviewing the definitions and language used in the Code could have potentially significant impacts on the application of the consumer protections contained in the Code.

Relevantly, SACOSS would also like to refer ESCOSA to our briefing to SA Consumer Experts Panel Meeting 02/2018 (and Attachments), which contains a detailed outline of our priorities for SA Water's Regulatory Determination 2020 (our **Priorities Report**).

Definitions of 'customer', 'consumer' and 'residential customer' under the Code should align with the definitions under the Water Industry Act 2012

SACOSS submits the Code should include definitions of 'customer', 'consumer' and 'residential customer' that align with the definitions under the [Water Industry Act 2012](#) (the WI Act). We also submit the body of the Code should be amended to specifically identify the application of relevant clauses to either the 'customer', 'consumer' or 'residential customer', where appropriate.

Clause 1.8 deals with definitions under the Code, providing at clause 1.8.1 that:

*'In this industry code words appearing in bold like **this** have the following meanings'.*

In the current Code, both the words **customer** and **residential customer** appear in bold. However, only 'residential customer' is defined under the clause 1.8.1 to mean:

'a customer which acquires retail services primarily for domestic purposes'

Section 4(1) of the Water Industry Act provides for definitions of 'customer' and 'consumer':

*'**customer** means a person who owns land in relation to which a retail service is provided and includes—*

- (a) where the context requires, a person seeking the provision of a retail service; and*
- (b) in prescribed circumstances—a person supplied with retail services as a consumer or user of those services (without limiting the application of this definition to owners of land); and*
- (c) a person of a class declared by the regulations to be customers'.*

*'**consumer** means a person supplied with retail services as a consumer or user of those services'*

SACOSS submits the definition of 'consumer' under the Act includes tenants of premises who are supplied with retail services as the user of those services.²

Section 37 of the Water Industry Act deals with Customer Hardship Policies. Section 37(5) provides that:

'In this section-

*'**residential customer** means a customer or consumer who is supplied with retail services for use at residential premises'.*

² See the second reading speech on the Water Industry Act Bill, where the Hon. M. PARNELL stated: 'In relation to tenancies, the legislation needs to better define the relationship between customers and consumers, because these two words are effectively a proxy for landlord and tenant'.

<http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-8490>

SACOSS therefore submits the intention of the WI Act is that both ‘customers’ and ‘consumers’ (tenants) are afforded the protections and supports provided for under the Minister’s Customer Hardship Policy.

Section 4(2) and 4(3) of the WI Act provide for designated customers, as follows:

‘(2) A reference in this Act to designated customers, or designated classes of customers (or customers of a designated class), is a reference to customers, or classes of customers, designated by the Minister by notice in the Gazette.

(3) The Minister may—

(a) in acting under subsection (2), make different designations with respect to different sections of this Act;

(b) by further notice in the Gazette, vary or revoke a previous notice under subsection (2).’

Regulation 4 of the [Water Industry Regulations](#) provides for the following ‘Interpretation—definition of customer’ (emphasis added):

*‘For the purposes of paragraph (b) of the definition of **customer** in section 4 of the Act, the following are circumstances in which **the definition of customer includes a consumer of retail services:***

*(a) for the purposes of requiring the water industry entity to comply with **code provisions under section 25(1)(b)(iii) and (iv) of the Act** relating to limitations on the grounds on which the supply of designated services to customers may be discontinued or disconnected and processes to be followed before designated services are discontinued or disconnected;*

*(b) for the purposes of a process to be followed to resolve disputes between a water industry entity and its customers in accordance with **section 25(1)(g)** of the Act;*

*(c) for the purposes of an ombudsman scheme determined or approved by the Commission in accordance with **section 25(1)(h)** of the Act.’*

Confusingly, paragraph (b) in the definition of ‘customer’ in the WI Act, provides in brackets ‘**(without limiting the application of this definition to owners of land)**’. SACOSS submits the intention of Regulation 4 is to extend certain identified protections to consumers / tenants, however this intention appears to have been defeated by the wording of paragraph (b) in the definition of ‘customer’. The effect, then, of Regulation 4, is to include ‘consumers’ within the definition of ‘customer’ for the purpose of certain circumstances (outlined in more detail below), on the proviso that those consumers must also be owners of land in line with paragraph (b).

SACOSS questions whether this is the intended consequence of Regulation 4, as the distinction between a customer and a consumer is clearly based on land ownership; a consumer is, for all intents and purposes, a tenant and a customer is a landowner. If a consumer must also be an owner of land in accordance with paragraph (b), then Regulation 4 has no meaningful effect.

We believe the intention of the legislature was for designated customers to include ‘consumers’ for the purposes of the following sub-sections of Section 25(1) of the Water Industry Act:

The Commission must make a licence subject to conditions determined by the Commission:

25(1)(b) *‘requiring the water industry entity to comply with code provisions as in force from time to time (which the Commission must make under the Essential Services Commission Act 2002) relating to the following matters with respect to designated customers, or designated classes of customers:*

(iii) limitations on the grounds on which the supply of designated services may be discontinued or disconnected;

(iv) the processes to be followed before designated services are discontinued or disconnected'

25(1)(g) *'requiring a specified process to be followed to resolve disputes between the water industry entity and its customers;'*

25(1)(h) *'if the water industry entity provides designated services to designated customers, or designated classes of customers, requiring the water industry entity to participate in an ombudsman scheme determined or approved by the Commission;'*

In our view, it would make sense for consumers of water retail services (tenants) to be protected from disconnection (restriction), and for certain processes to be followed prior to the disconnection (restriction) of those consumers. It is also reasonable for consumers to be given access to dispute resolution processes and ombudsman schemes.

SACOSS is therefore seeking ESCOSA further explore the operation of Regulation 4, in order to determine whether 'consumers' are considered to be 'customers' for the purposes of the sections outlined above. In this context, it is worth noting Regulation 22 of the WI Regulations which deals with the responsibilities of customers:

(1) For the purposes of section 69 of the Act, a customer who is supplied with water by a water industry entity must, in relation to a meter supplied by the entity, or an associated fitting, inform the entity of damage to the meter or associated fitting as soon as is reasonably practicable after the damage occurs.

*(2) For the purposes of paragraph (b) of the definition of customer in section 4 of the Act, a reference to customer in subregulation (1) includes a reference to a person supplied with water by a water industry entity **as a consumer or user of the water**.*

Clearly the purpose of Regulation 22 is to extend responsibility for reporting damaged water meters to consumers (tenants). Here the same issue arises with the interpretation of paragraph (b) in the definition of customer. SACOSS submits the current review of the WI Act could examine the meaning and intent of these designations and the proviso in paragraph (b) of the definition of 'customer'.

In the event ESCOSA determines that consumers are included in the definition of customer in those circumstances, we submit ESCOSA should amend the Code accordingly, including by specifically and clearly identify the clauses which apply to both customers and consumers. For example, Clause 26 in the Code which deals with 'Restriction of Water supply' could have an initial clause about the application of the clauses dealing with water restriction.³ The clause could state:

'This clause applies to all residential customers, including customers and consumers'.⁴

Similarly, Clause 3 which deals with dispute resolution and clause 20 which deals with billing disputes, could specifically state that the protections and access to ombudsman schemes extends to 'consumers'.⁵ More broadly, SACOSS submits the scope of the Code, contained in clause 1.2.1, should read 'This industry code

³ While section 25(1)(b) refers to 'disconnection', SACOSS submits the language used in the WI Act is based on energy legislation and that water 'restriction' is the equivalent of disconnection in energy. We consider the review of the WI Act should look into the language used ensuring it is applicable to water services. We believe the context of the relevant disconnection provisions in the legislation support an interpretation that disconnection is interchangeable with restriction.

⁴ Where 'residential customers' is defined in the Code in accordance with section 37(5) of the WI Act, and 'customer' and 'consumer' are defined in accordance with section 4 of the WI Act.

⁵ We also submit clause 3.3, clause 6, clause 8, clause 10 apply to 'residential customers'.

regulates some of the standard terms and conditions for the provision of retail services to **customers, consumers and residential customers** by a retailer under the Water Industry Act’.

It is worthwhile looking to Part 3 of the Essential Services Commission of Victoria’s [Energy Retail Code](#) which outlines, under each Division, the purpose / objective of the Division, and the application of the Division. This is extremely useful where different clauses apply to different cohorts of customers / consumers.

Communication requirements

ESCOSA has identified that ‘the way SA Water communicates with customers about the assistance it provides to customers experiencing hardship, and limitations around debt collection and water restriction for hardship customers, are within the scope of our review’.⁶

We submit all clauses of the Code dealing with matters covered in SA Water’s Hardship Policy, including communication requirements, should clearly state that the operation of the clause extends to ‘residential customers’ (which includes ‘consumers’/ tenants). We believe this is in line with ESCOSA’s obligation under section 25(5) of the WI Act which provides:

Section 25(5) - (5) A code or set of rules under subsection (1)(a) must include provisions to assist customers who may be suffering specified types of hardship relevant to the supply of any services (being provisions that comply with any direction of the Minister and that will apply under the code or rules despite any provision made by the Essential Services Commission Act 2002).

The [Ministers Residential Customer Hardship Policy](#) clearly extends in its application to ‘consumers’ and therefore the Code must align with that. We submit it would be useful to cross reference the Code with the SA Water Customer Hardship Policy and where provisions of the Code relate to provisions of the Hardship Policy, clearly state that those provisions apply to ‘consumers’.

In relation to communications for example, Clause 6 dealing water efficiency advice and clause 8 dealing with advice on concessions, rebates or grants are both covered in the Minister’s Hardship Policy (see clauses 23 and 34), and therefore we submit those provisions of the Code should extend in their application to ‘residential customers’ (including tenants) as defined in section 37(5). Clause 10 which deals with the retailer’s obligation to inform customers about the hardship policy should also extend the obligation to ‘residential customers’ in line with section 37(5) and section 25(5).

More broadly, SACOSS strongly supports ESCOSA looking at prescribing communication requirements under the Code to ensure SA Water is meeting the needs of its customers, particularly vulnerable customers and tenants.

As referred to in our Priorities Report, Urbis Pty Ltd has produced a research report for SACOSS on restricted water customers (the Urbis Report). This report was commissioned by SACOSS to gain a greater understanding of the profile of people who have had their water restricted, as well as the impact of water restriction on their lives, recognising that these households likely comprise the most vulnerable in South Australia.

The Urbis Report recommended a review of SA Water’s materials ‘to ensure messaging promotes customer understanding and engagement with the available supports’. The Report noted that ‘despite receiving letters and notices, many customers were not aware of the supports available to customers experiencing financial hardship, and as a result, often delayed contacting SA Water’.⁷

⁶ The Essential Services Commission of South Australia, SA Water RD20, Consumer Experts Panel – Background Briefing: Review of the Water Retail Code – Major Retailers, June 2019, p. 2

⁷ Urbis Pty Ltd, Restricted Water Customer Research Report, prepared for SACOSS, October 2017, p.iv

The Report also recommended SA Water provide 'additional information at the time of restriction to ensure customers understand what to expect from a restriction'.⁸ SACOSS considers SA Water should not only provide information at the time of restriction, but should be providing information and offers of support as soon as the customer accrues a water bill debt, in accordance with its obligation to offer payment plans to customers experiencing payment difficulty under the Code.

It is also worth noting a recent report by JFA Purple Orange into the high water needs of customers living with a disability, which makes the following recommendations:

- 'Implement a standard requirement around the minimum notice period for scheduled works that involve the disconnection of water (e.g. Two weeks where possible and 48 hours minimum) via various modes of communication such as letter, email, hand-delivered mail drop, and SMS.
- Make water bills more accessible by offering a variety of formats such as Easy English, bigger font with more symbols, a relay service, braille, audio bill, and talking bill and additional information in the household comparison section'.⁹

There is clearly a need to focus on prescribing methods of communication, timing and frequency of communication, triggers for communication and formats of communication to address the needs of vulnerable South Australian water consumers.

Hardship provisions

The Briefing Paper states 'extending the application of the hardship policies to water consumers who are not SA Water customers (for example tenants) is also not within the scope of our review'.¹⁰

SACOSS considers the WI Act clearly intends for hardship policies to apply to water consumers (tenants). As outlined above, section 37(5) states that 'residential customer' in section 37 means 'a customer or consumer who is supplied with retail services for use at residential premises'.

Additionally, section 37(4) of the WI Act provides that 'it will be a condition of a water industry entity's licence that it complies with the customer hardship policy applying in relation to the entity under subsection (3)'. We therefore consider that SA Water could be in breach of its licence if it fails to identify hardship customers who are tenants, and offer hardship supports to those tenants ('consumers') in accordance with the requirements under the Policy.

As outlined above, SACOSS is keen to ensure ESCOSA very clearly point out within the Code, that where provisions of the Code relate to hardship policies or apply to hardship customers, then those provisions extend to 'residential customers' (where the definition includes consumers / tenants). We submit all clauses of the Code dealing with communication of hardship policies, debt management, restriction, and reconnection fees for hardship customers¹¹ should apply to 'residential customers' in accordance with section 37(5).

In relation to 'hardship provisions' as an initial area of focus, we consider ESCOSA should extend this focus area to **payment difficulty** provisions and provisions dealing with **restriction** of water supply.

⁸ Urbis Pty Ltd, Restricted Water Customer Research Report, prepared for SACOSS, October 2017, p.v

⁹ JFA Purple Orange, Water Consumers Research Project 2: High water needs of people living with a disability and their families in South Australia, August 2019, p. 24

¹⁰ The Essential Services Commission of South Australia, SA Water RD20, Consumer Experts Panel – Background Briefing: Review of the Water Retail Code – Major Retailers, June 2019, p. 3

¹¹ The Essential Services Commission of South Australia, SA Water RD20, Consumer Experts Panel – Background Briefing: Review of the Water Retail Code – Major Retailers, June 2019, p. 5

SACOSS is of the view that, in terms of offering supports to energy and water customers, the concept of 'hardship' is outdated and creates a barrier to early and meaningful assistance. The Public Interest Advocacy Centre's (PIAC) 2018 disconnection report¹² shows that even consumers in severe and prolonged payment difficulty do not identify themselves as being 'in hardship', and are likely to regard this or any similar terminology as a source of shame and embarrassment. This presents a significant barrier to consumers being aware of assistance measures and seeking assistance at an early stage.

Our position is that all customers who are anticipating or experiencing payment difficulty should be able to access supports from their energy or water retailer. This has been the approach adopted by Victoria in their new Payment Difficulty Framework (PDF) for energy customers. Victoria's PDF applies to 'all residential customers anticipating or experiencing payment difficulty', and we believe this is a more meaningful approach to providing assistance than distinguishing between hardship customers and customers experiencing payment difficulty (in circumstances where being identified as a hardship customer involves a subjective decision of the retailer). Under the PDF, customers are automatically entitled to different levels of supports depending on whether the customer is in debt, and the severity of the debt.

In line with our Priorities Report, SACOSS considers that evidence of water bill debt¹³ should be sufficient to trigger a 'belief' in SA Water that a customer is experiencing payment difficulties, and therefore trigger the consequent obligation on SA Water (clause 25.1.1 of the Code) to contact that customer and offer a payment plan.

Relevantly, the Urbis Report¹⁴ found that 'several customers contacted SA Water either in the lead up to restriction or during an earlier period of financial hardship. Despite this, most of these customers were not placed on payment plans at that time'. As detailed in our Priorities Report, proactive, early intervention and support by SA Water is critical to preventing spiralling customer debt, and avoiding the significant negative social and emotional impacts associated with restriction. SACOSS considers the operation of the provisions of the Code dealing with payment difficulty (including payment plans), are essential to early intervention and prevention from further debt and restriction.

We also believe customers who are complying with a payment plan should be afforded protection from restriction. We repeat our recommendation from our Priorities Report, that Clause 26 of the Code should be amended to include a prohibition on restricting water services where the customer is complying with a payment plan.

In view of all the matters outlined above, we are seeking the 'hardship' focus area identified by ESCOSA be broadened to encompass payment difficulty provisions, and associated processes dealing with restrictions for non-payment.

Service standards

SACOSS is pleased the Service Standards are an initial area of focus. We are particularly interested in further exploring the possibility and viability of introducing a GSL Scheme for SA Water.¹⁵ The Scheme could be modelled on Victoria's GSL Scheme which only includes a mandated hardship related GSL (all other GSLs are voluntarily imposed by individual water businesses).

¹² Public Interest Advocacy Centre, Close to the Edge – a Qualitative and Quantitative study, 21 November 2018 <https://www.piac.asn.au/2018/11/21/close-to-the-edge-a-qualitative-quantitative-study/>

¹³ This should be easily accessible for SA Water through its billing department.

¹⁴ Urbis Pty Ltd, Restricted Water Customer Research Report, prepared for SACOSS, October 2017, p.iii

¹⁵ In line with our priorities contained in the Briefing to SA Consumer Experts Panel Meeting 02/2018

We have attached our briefing paper on Victoria's Hardship GSL to this submission (it was previously provided to ESCOSA with our Priorities Report), and support ESCOSA continuing to examine the benefits of requiring SA Water to follow certain identified steps prior to proceeding to restrict a customer's water. These steps could link in with the prescribed communication requirements (as a focus of the Code Review).

Billing and accounts / Family Violence provisions

SACOSS supports ESCOSA focusing on these areas as part of the review of the Code. We consider it is extremely beneficial to look to other jurisdictions for examples of consumer protections that have successfully operated to support and protect customers in vulnerable circumstances.

We thank you in advance for consideration of our comments. If you have any questions in relation to this submission, please contact Georgina Morris on georgina@sacoss.org.au or 08 8305 4214.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ross Womersley', enclosed within a thin black rectangular border.

Ross Womersley
Chief Executive Officer