



# Response to the 2023 review of the water third party access regime



**Government of  
South Australia**

# 1 An SA Water perspective on Third Party Access

SA Water is a public corporation established under the *South Australian Water Corporation Act 1994* that is wholly owned by the Government of South Australia. As a public corporation, SA Water is required to conduct its operations commercially, unless directed otherwise.

SA Water operates under an economic regulatory framework operated by the Essential Services Commission of South Australia (ESCOSA), which is enabled through the *Water Industry Act 2012* and *Essential Services Commission Act 2002*.

Part 9A of the *Water Industry Act 2012* sets the legislative framework governing third party access to water industry infrastructure, including that owned and operated by SA Water. The *Water Industry Act 2012* also sets out the role of ESCOSA in both regulating and reviewing the third-party access regime.

## 1.1 Background

The intent of third-party access is to encourage economically efficient use of infrastructure resources where it is more efficient for parties to share access to infrastructure rather than duplicate it. Third party access regimes most frequently exist in instances where there is a monopoly provider that owns significant infrastructure that is not economical to reproduce – such as electricity and telecommunication poles and wire infrastructure, airports, railways and ports infrastructure.

Through amendments to the *Water Industry Act 2012* during 2015<sup>1</sup> a formal third-party access regime was implemented.

Third party access regime was established primarily to provide a framework for third parties to negotiate access to specified water and sewerage infrastructure services provided by SA Water, with the potential for arbitration should negotiations fail.

The provision of third-party access to SA Water infrastructure presents opportunities to maximise the use of regulated assets, providing additional opportunities to maximise the value realised from already constructed assets where unused capacity exists.

SA Water supports this outcome, both in the interests of enabling state growth, but also in reducing the cost of regulated water and wastewater services to customers.

However, fundamental to realising these potential opportunities are operational and policy considerations which are covered in the following sections.

This response to the review seeks to respond to matters identified through the issues paper<sup>2</sup>, as well as other aspects that will be considered in separate sections of this document.

## 1.2 Operational considerations

Conceptually, third-party access involves an entity accessing SA Water's regulated infrastructure to transport biologically and chemically compatible water or sewage. For example, an SA Water trunk main that transports untreated River Murray water could similarly be used to transport a third party's River Murray entitlements, or water from another compatible source.

Any arrangement becomes physically more complicated in practice due to operational considerations including:

- Available network capacity, including demand variations within and between days, and between seasons for regulated customers and those seeking transport,

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<sup>1</sup> See - [Water Industry \(Third Party Access\) Amendment Bill 2015 | South Australian Legislation](#)

<sup>2</sup> ESCOSA (2023) [Issues Paper – Review of the access regime that applies to the South Australian water industry - issues paper, ESCOSA, Accessed 7 August 2023.](#)

- That asset failure, breakdowns and maintenance in SA Water infrastructure (or other required infrastructure like electricity assets) can affect availability,
- Short and long-term water security where the interests of those seeking transport and the regulated customer base can be incompatible, particularly during periods of rapid regulated customer growth, and
- Equitably managing input costs including energy and chemical treatment to ensure that the regulated customer base is not disadvantaged through the access regime.

Together, these factors can result in movement in available access for a third party.

For example, currently many primary production users of the third-party access will seek supplies during summer months, which coincide with times when regulated customer demands are highest. Accordingly, while a network resource may have capacity on average through a year, it may not have capacity when required.

Furthermore, in the medium term, climate change is likely to exacerbate this issue, with demands from primary producers accelerating as local water sources become less reliable (both quality and quantity being impacted) over time.

As the impacts of climate change become more pronounced it will become necessary to more frequently review available capacity within infrastructure. Just because a pipeline is available for third party access does not mean there is capacity, nor that current available capacity will be available in the future.

## 1.3 Policy considerations

The policy environment also affects third party access.

In contrast to most Australian water utilities, SA Water is subject to regulation of its revenues, not its prices. Under this arrangement, there is a longstanding convention adopted by successive governments that water and sewerage pricing policy is set by government, in consultation with SA Water.

A further policy driver that is salient to third party access is statewide price. Here, customers with the same characteristics across the whole state pay the same cost for water, irrespective of the cost to serve.

This policy environment creates two complexities for price setting in the context of third-party access.

The first of these is that there have been longstanding policy approaches where there is a structural under-recovery of the fixed costs associated with operating water assets and an over-recovery of the variable costs while operating within a set revenue envelope. This approach recognises policy drivers of equity in providing access to water, reducing the cost to connect to SA Water's network. It also incentivises efficient consumption of water because higher variable charges escalate in line with the volumes of water consumed which increase at higher consumptions through the inclining block tariff. While ESCOSA<sup>3</sup> and its consultants<sup>4</sup> have at times advocated for alternatives, the implications for residential prices – high entry costs to access water - particularly amongst those least able to pay have not been considered by proponents of this approach.

The second of these is that because of the statewide pricing regime where SA Water is obliged to charge all like customers the same amount for water and sewerage services, and this does not always reflect the efficient price of delivery.

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<sup>3</sup> ESCOSA (2014) [Inquiry into reform options for SA Water's drinking water and sewerage prices – Final inquiry report](#), ESCOSA, accessed 12 September 2023.

<sup>4</sup> See Sapere Research Group (2023) [Review of third-party access pricing to SA Water's water infrastructure services](#), Accessed 7 August 2023

Accordingly, due to the exercise of these policy levers, arbitrage is possible where protections are not embedded in the policy approach. Here, a third party could “cherry pick” provision in certain areas of the network through seeking to target low supply cost areas, leaving SA Water to continue to service high supply cost areas with those costs borne by a potential smaller customer base.

## 1.4 The third-party access approach established through the progression of the Water Industry (Third Party Access) Bill and amended *Water Industry Act 2012*.

During the progression of the Water Industry (Third Party Access) Bill through the South Australian Parliament in 2015 commitments were made regarding protections for retail consumers in response to requests from the South Australian Council of Social Services (SACOSS) and some crossbench members.

These concerns prompted an amendment to the bill, where the then Minister stated in the second reading speech to the Legislative Council that:

*The amendment would require the arbitrator to take into account any direction that I give to SA Water under section 6 of the Public Corporations Act 1993. These directions currently include non-commercial activities performed by SA Water, such as fluoridation and statewide pricing. It is my intention to provide SA Water with a direction regarding the basis for negotiating access prices with an access seeker, which would include retail minus avoidable costs.<sup>5</sup>*

The intent of this provision was to provide a backstop mechanism, to enable the benefits associated with a third-party access regime, without eroding the customer base of the corporation.

Section 86ZN of the *Water Industry Act 2012* enables SA Water (or any regulated operator subject to third party access) to enter into other agreements. Specifically:

### **86ZN—Access by agreement**

*Nothing in this Part prevents a regulated operator entering into an access contract with another person on terms and conditions agreed between the parties.*

On 24 June 2016 the then Minister issued a direction to SA Water, stating:

*I, Ian Hunter, Minister for Water and the River Murray, direct SA Water to determine prices for access to designated services on the basis of a charge per customer calculated using a retail-minus methodology unless otherwise approved by me.<sup>6</sup>*

This direction gives effect to ensuring protections consistent with the statements made during the passage of the Bill.

In May 2017, the then Minister brought clarity to the final clause of the 24 June 2016 direction, and its relationship to section 86ZN, providing:

*“...approval for SA Water to determine the pricing methodology and prices applicable to commercial access agreements negotiated in a way consistent with 86ZN of the Water Industry Act 2012, where:*

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<sup>5</sup> South Australia (2015) Parliamentary Debates, Legislative Council, 16 June 2015, 940 (Ian Hunter, Minister for Water and the River Murray) (Water Industry (Third Party Access) Amendment Bill), Accessed 12 September.

<sup>6</sup> Minister for Water and the River Murray (South Australia) (2016) *Public Corporations Act 1993*, Direction to the South Australian Water Corporation Pursuant to Section 6 of the Public Corporations Act 1993. South Australian Gazette, no 39, 30 June 2016, p2656

*These commercial access agreements do not relate to or affect retail customer arrangements; and*

*These commercial customers remain able to negotiate access under Part 9A of the Water Industry Act 2012 to enable the use of 'retail minus' methodology in calculating access costs if they so choose."*

SA Water has adopted an approach consistent with the Act, this 2016 direction and subsequent 2017 approval since this time.

While this statutory mechanism presents a backstop (limiting the maximum cost paid to access transportation arrangements to a retail-minus approach), commercial negotiations for access outside of the formal regime can be undertaken as allowed under Section 86ZN of the *Water Industry Act 2012*.

In practice, SA Water considers the current light touch approach to provide practical access to SA Water infrastructure consistent with the Water Industry (Third Party Access) Bill.

Since the commencement of the third-party access regime, no negotiations with customers have resulted in arbitration, or use of the retail-minus approach. To SA Water this suggests that the provisions associated with Section 86ZN of the Act have been effective.

While improvements to the regime could be implemented, such as establishing alternate pricing or access regimes, this would be at a cost. It is unclear that any incremental benefit associated with this approach would justify the potential cost.

## 2 Consultation questions

- 2.1 Question - What factors have led to the increase in voluntary access agreements over the past decade? Are these factors likely to support further growth in access agreements, or do stakeholders anticipate stable or decreased demand for commercial access in future?

Climate change, warmer growing seasons and lack of access to fit for purpose water for irrigation has led irrigators in the viticulture sector to seek alternative water products.

- 2.2 Question - Are current access seekers looking to expand? Are prospective access seekers considering any new third-party access arrangements or schemes?

SA Water continues to receive requests from prospective access seekers for commercial access agreements primarily within the viticulture industry.

- 2.3 Question - To what extent do access seekers have bargaining power when seeking access to declared pipeline infrastructure? Can this differ across SA Water's declared pipeline infrastructure and across geographic regions?

Consistent with the framework discussed in section 1.4 of this submission, access seekers continue to negotiate third party access on a case-by-case basis.

As the costs to SA Water of providing third party access vary between geographic locations and declared pipelines, so too do the costs that SA Water would seek to charge access seekers.

Negotiations can and do occur with access seekers between the backstop associated with the 2016 Ministerial direction to use the retail minus approach, and arrangements that would be loss making.

Most of SA Water's voluntary access arrangements are negotiated to provide for access to pipeline capacity during the off-peak period (winter) or 'time of day' peak period (summer). This enables access seekers to take advantage of pricing arrangements during a lower state-wide demand period and self-management of water requirements through direct purchase of the necessary volume of water and management of storage requirements.

- 2.4 Question - To what extent do stakeholders see value in having an access regime as a form of protection for access seekers?

SA Water has not entered any access arrangements consistent with the statutory backstop mechanism embedded in the *Water Industry Act 2012*.

- 2.5 Question - To what extent do stakeholders see value in the information disclosure requirements under the access regime?

SA Water has no feedback from third parties on the value in the information disclosure requirements.

- 2.6 Question - For stakeholders that have sought access to SA Water's infrastructure, but did not reach a voluntary agreement, what were the key impediments (i.e. price, terms and conditions, other)? Was the process of conciliation and arbitration considered – if not, why?

SA Water has not received any applications that have resulted in arbitration or that have used the statutory backstop mechanism embedded in the *Water Industry Act 2012*.

SA Water considers that the existence of the framework is sufficiently incentivising SA Water to negotiate commercial agreements in good faith with access seekers and enter into agreements that are mutually beneficial for the access seeker and SA Water's customers.

Applications for voluntary access agreements that have not resulted in access agreements have generally been due to SA Water not having the capacity available to transport the third party's water.

## 2.7 Question - What other benefits does the access regime deliver?

Applications for voluntary access agreements that have not resulted in access agreements have generally been due to SA Water not having the capacity available to transport the third party's water. As discussed in section 1.3, the retail minus pricing methodology under the access regime provides SA Water's regulated customers protection from bearing any higher costs incurred by SA Water where access is provided in a low, cost supply area leaving SA Water with customer bases that are more expensive to serve, driving up the cost per water user. In the SA Water context, access prices should not facilitate new entry which is only profitable because of the state-wide pricing regime.

## 2.8 Question - What would be the costs and benefits of regulating access arrangements through the national regime?

The applications SA Water receives for access agreements are almost exclusively for the viticulture industry, suggesting that they would not meet the relevant criteria, including the national significance test.

## 2.9 Question - Do stakeholders consider current access pricing to be transparent?

SA Water publishes its voluntary third-party access prices on its website in accordance with the Water Charge Rules 2010 (WCR) and considers this approach transparent.

## 2.10 Question - What would be the costs and benefits of introducing a mechanism for stakeholders to seek to have water and sewerage infrastructure and infrastructure services declared or excluded from the access regime, and what form should it take?

SA Water doesn't believe there is any benefit of introducing a mechanism for access seekers to have water and sewerage infrastructure declared or excluded from the access regime as the process to enter into a voluntary access agreement has proven an effective pathway as evidenced by the growth in voluntary third-party access agreements.

SA Water's costs to amend our access agreement templates and information brochures would not be significant if a mechanism existed for stakeholders to seek to have water and sewerage infrastructure and infrastructure services declared or excluded from the access regime. SA Water would require sufficient notice to implement the updates and inform all relevant stakeholders.

Access requests received by SA Water in recent times have almost exclusively been for Off-Peak Water Transportation of Clare Peak Summer Water Transportation. Information on these schemes exist on the SA Water website including access pricing.