



Inquiry into regulatory arrangements for small-scale water, sewerage and energy services

DRAFT Inquiry Report

August 2020

Request for submissions

The Essential Services Commission (**Commission**) invites written submissions on this paper. Written comments should be provided by **Friday, 2 October 2020**.

It is the Commission's policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to publish any submission based on length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to: **Inquiry into regulatory arrangements for small-scale water, sewerage and energy services**

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Glossary of terms

Commission	Essential Services Commission, established under the <i>Essential Services Commission Act 2002</i>
Commission's statutory objectives	The Commission's primary objective is contained in section 6(a) of the ESC Act, being the protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services, with section 6(b) providing additional objectives to which the Commission must have regard
Competent operation	The demonstrated ongoing provision by a licensee of a competent service as defined in Box 1
CWMS	Community wastewater management system
DEM	Department for Energy and Mining
ESC Act	<i>Essential Services Commission Act 2002</i>
EWOSA	Energy and Water Ombudsman SA
Framework and Approach paper	Small-scale networks Inquiry, <i>Framework and Approach</i> , June 2019, available at https://bit.ly/2JpPaU1
Inquiry	This small-scale networks Inquiry
Licensees	Small-scale network service providers licensed by the Commission
LPG	Liquid petroleum gas
Minister	Minister responsible for the relevant Act
NWI	National Water Initiative
RAES	Remote Area Energy Supply
Regulatory framework	Economic regulatory framework administered by the Commission
SACOSS	South Australian Council of Social Service
Small-scale networks	Comprising, South Australian: <ul style="list-style-type: none"> ▶ water and sewerage (water industry) networks with 50,000 connections or less ▶ off-grid electricity networks, and ▶ reticulated natural and liquid petroleum gas (gas industry) networks
Small-scale networks Inquiry	Inquiry into regulatory arrangements for small-scale network water, sewerage and energy services (see Appendix 1) – this Inquiry.
Technical Regulator	The position of the Technical Regulator is established under the <i>Electricity Act 1996</i> , the <i>Gas Act 1997</i> , the <i>Energy Products (Safety and Efficiency) Act 2000</i> , and the <i>Water Industry Act 2012</i> . Its primary objectives are ensuring the safety of workers, consumers and property as well as compliance with legislation and applicable technical standards in the electricity, gas and water industries.
Treasurer	Treasurer for the South Australian Government
Trusted licensee	A licensee that demonstrates to the Commission's satisfaction that it is engaging in a competent operation
VTA model	Verified trust and accountability model

Summary

The Commission has released this Draft Inquiry Report to explain, and seek stakeholder comment on, its current positions, findings and recommendations in relation to the Inquiry into regulatory arrangements for small-scale and off-grid water, sewerage and energy services (**Inquiry**), which the Commission is conducting under Part 7 of the *Essential Services Commission Act 2002*.

The Draft Inquiry Report proposes three changes to the current regulatory framework (summarised below and explained in detail in chapters 3, 4 and 5 respectively):

- ▶ Introducing a verified trust and accountability regulatory model – including regulatory reporting requirements
- ▶ Harmonisation of industry codes and guidelines, and
- ▶ Mandatory Energy and Water Ombudsman SA membership.

This Draft Inquiry Report has been informed by submissions received in response to a Framework and Approach paper released in June 2019.

What is the purpose and objective of this Inquiry?

The Commission is conducting this Inquiry to identify the potential for enhancements and refinements to the nature and scope of its existing economic regulatory framework for small-scale and off-grid water, sewerage and energy services. In doing so, the Commission's primary objective is to protect South Australian consumers' long-term interests with respect to the price, quality and reliability of essential services.

In considering the issues raised through the Inquiry, the Commission is mindful that the benefits of any regulatory requirements need to outweigh the costs, and that the needs and views of all stakeholders need to be taken into account.

What is the context?

Under the *Water Industry Act 2012*, the *Electricity Act 1996* and the *Gas Act 1997*, the water and sewerage, electricity and gas industries are (respectively) regulated industries for the purposes of the *Essential Services Commission Act 2002*, providing the Commission with regulatory oversight. Those industry regulation Acts require a person providing small-scale network service(s) to hold a licence issued by the Commission.

This Inquiry relates to all licensed small-scale network services, defined as:

- ▶ water and sewerage (**water industry**) networks with 50,000 connections or less
- ▶ off-grid electricity networks, and
- ▶ reticulated natural and liquid petroleum gas (**gas industry**) networks.

Of note, the Inquiry does not cover natural gas services or electricity services provided in the relevant national markets.

What is the Inquiry's scope?

The Inquiry's scope is to:

- ▶ analyse the consumer protections associated with the delivery of services in small-scale networks while ensuring regulatory arrangements are targeted, efficient and appropriate, and

- ▶ identify an appropriate economic regulatory framework that:
 - is relevant for customers, licensees and exempted entities who provide a small-scale network service, and
 - will remain relevant for new participants, business models and/or technologies which could deliver more effective and innovative outcomes for customers in the future.

The framework has to accommodate diverse networks, generally situated in rural and regional South Australia, while also meeting the Commission's objectives and minimising the costs of regulation.

What is being proposed?

Verified trust and accountability model

The proposed verified trust and accountability model (**VTA model**) is intended to provide a targeted, flexible approach to regulation. The VTA model acknowledges and 'trusts' licensees which demonstrate, on a continuous basis, business practices that:

- ▶ are customer-focussed and involve consistent and genuine engagement and consultation with customers to deliver the price-service-quality mix valued by customers at the lowest sustainable cost
- ▶ develop, maintain and implement sound and robust long-term financing, asset management and operational plans that underpin the delivery of services in a sustained manner
- ▶ price services in a manner that takes account of efficient costs on a sustainable basis, customer willingness to pay, minimum legislative standards and affordability, noting that there may be trade-offs within these that need to be effectively and transparently managed
- ▶ appropriately account for legislative requirements (not just those arising under the Commission's regulatory framework), and
- ▶ provide, or will provide for, sufficient financial strength to ensure the long-term viability of the service.

While these practices will need to be demonstrated – transparently and publicly – by licensees, the Commission will also enhance its data analysis techniques and practices. This will allow it to better understand market outcomes and take action as needed, while at the same time reducing the amount of data that licensees are required to report to it on a regular basis.

In the initial stages, the benefit for licensees will be a reduction in the nature and scope of regulatory reporting requirements, as compared to current levels. For customers, the benefits arise from the criteria themselves: they can have confidence that their provider has a competent operation.

If a licensee cannot consistently demonstrate competent operation, it may face additional reporting and/or regulatory measures in order that customers' interests are adequately protected. Once the licensee is able to re-establish trust and accountability those additional measures will be rolled back.

The VTA model is likely to evolve with time, allowing the Commission to further reduce regulatory oversight for those licensees that consistently demonstrate competent operation.

The Commission is proposing that, if the VTA model is implemented, it would start from July 2021 to provide an appropriate lead time for licensees and other stakeholders.

Harmonisation project

In parallel with the implementation of the VTA model, the Commission has considered the harmonisation/standardisation of current code and licence obligations across the small-scale industries – the harmonisation project.

For reasons of history and underpinning legislative frameworks, there are various differences between the regulatory arrangements for water, gas and electricity industries. The Commission has identified the potential for those differences to be inefficient for licensees (particularly where a single licensee provides services across those industries) and for consumers, to the extent that they might expect common issues across industries to be dealt with in a common manner, which may not always be the case at present. At the same time, the Commission recognises that changes to existing business systems and practices will have costs, which is an important consideration in the context of potential harmonisation.

Given that the proposal to adopt the VTA model would represent a significant change in regulatory approach, and to ensure maintenance of existing consumer protections, the Commission's proposal is that it will continue to pursue harmonisation as a separate and parallel project.

Energy and Water Ombudsman SA Membership

All licensees are currently required to have effective customer dispute resolution processes in place, including escalation to an independent dispute resolution body where a customer's complaint is not able to be resolved by the licensee. Under the *Water Industry Act 2012*, the Commission may require a licensee to utilise an independent dispute resolution body specified by the Commission.

For all national electricity market and natural gas providers, as well as for SA Water and some (but not all) small-scale water and sewerage service providers, the Commission has specified the Energy and Water Ombudsman SA (**EWOSA**) as the independent dispute resolution body. Where that is not the case, the Commission has over time permitted some licensees to use other entities, with the understanding that it would monitor customer outcomes over time. The Commission has since observed that licensees have adopted various approaches to dispute resolution and independent dispute resolution, with differing capacities to enforce remedies and differing outcomes for customers.

The Commission is proposing that all small-scale network providers will become members of EWOSA, for the following reasons:

- ▶ EWOSA is a recognised expert in customer complaint and dispute resolution, having provided that service for over 20 years in regulated essential services markets.
- ▶ Customers benefit from EWOSA's consistent, impartial dispute resolution process for customers, with the ability to impose remedies.
- ▶ Licensees benefit from EWOSA's cost-effective achievement of outcomes that reasonably reflect the interests of all parties, given the nature of the dispute and the behaviour of the participants to the dispute.
- ▶ The Commission benefits as, through reporting processes, EWOSA provides the Commission with complaint, dispute and systemic issues data that may be used to identify areas of regulatory concern or potential issues with the manner in which a licensee is conducting its operations. This will be critical information for the VTA model and, in its absence, the ability of the Commission to reduce licensees' regulatory reporting obligations will be limited.

The Commission acknowledges that the EWOSA scheme has a cost for licensees but, having analysed that cost structure, is of the view that, for the above reasons, the benefits of mandatory membership outweigh those costs.

Next steps

The Commission is seeking comments on this Draft Inquiry Report by Friday, 2 October 2020. For details on how to make submissions, please see the inside cover of this paper. The extended period of consultation is in recognition of the special demands the Covid-19 pandemic may place on many of our stakeholders.

1 Overview of the Inquiry

The Commission is conducting this Inquiry to identify the potential for enhancements and refinements to the nature and scope of its existing economic regulatory framework for small-scale and off-grid water, sewerage and energy services. In doing so, its primary objective is to protect South Australian consumers' long-term interests with respect to the price, quality and reliability of essential services.

The services relevant to the Inquiry are those provided through:

- ▶ water and/or sewerage networks with 50,000 connections or less
- ▶ off-grid electricity networks, and
- ▶ reticulated natural and liquid petroleum gas (LPG) networks (other than those owned by Australian Gas Networks Limited).

These networks are collectively referred to as **small-scale networks** throughout this Inquiry, and their service providers, who are licensed by the Commission, are referred to as **licensees**.

This Inquiry is important in the wider context of the changing ways in which essential services are delivered, as well as changing community expectations of those services and the licensees that provide them. The need to ensure that regulatory regimes (such as this economic regulatory framework) support business and economic development in South Australia is also relevant.

This Inquiry is also important because small-scale networks should be regulated in ways that fit the requirements of those networks, subject to ensuring appropriate consumer protections. The regulatory approaches adopted for larger-scale operations, such as entities operating in the National Electricity Market or SA Water, may not represent the best approach for regulating their small-scale network counterparts.

Given that context, the purpose of this Draft Inquiry Report is to outline, for stakeholder consideration and comment, the approach the Commission is proposing to adopt for the economic regulation of small-scale networks. This builds upon the Framework and Approach paper published and the consultation undertaken by the Commission on this (see sections 1.3 to 1.5).

1.1 The Commission's functions and powers

The water, electricity and gas industries are declared to be regulated industries for the purposes of the *Essential Services Commission Act 2002* (**ESC Act**), meaning that the Commission has economic regulatory powers and functions in relation to those industries (see section 2.1).

In that capacity, the Commission licenses small-scale network service providers and requires licensees, through mandatory licence conditions, to comply with Commission-made consumer protection codes. These establish the economic regulatory framework the Commission uses to monitor the performance of regulated entities against the obligations set out in legislation, with guidelines to help providers to comply with reporting requirements to the Commission.¹

The outcomes arising from the economic regulatory framework must be consistent with the industry Acts and meet the Commission's statutory objectives as set out in the ESC Act (**Commission's**

¹ Unless the context otherwise requires, any reference to reporting requirements in this report is a reference to reporting requirements to the Commission noting that, as outlined in this section, licensees are likely to be subject to a number of regulatory schemes administered by other agencies, each of which may have their own reporting requirements.

statutory objectives): the primary objective being the protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services.²

In developing and administering the economic regulatory framework, the Commission must also have regard to the need to:

- ▶ promote competitive and fair market conduct
- ▶ prevent misuse of monopoly or market power
- ▶ facilitate entry into relevant markets
- ▶ promote economic efficiency
- ▶ ensure consumers benefit from competition and efficiency
- ▶ facilitate maintenance of the financial viability of regulated industries and the incentive for long-term investment, and
- ▶ promote consistency in regulation with other jurisdictions.³

In addition to the Commission's economic regulatory framework, licensees are also subject to regulatory schemes administered by other agencies, such as the Technical Regulator for safety and technical regulation, SA Health for public health requirements for drinking water supply and the Environment Protection Authority for the environmental impact of businesses.⁴ This report deals solely with the economic regulatory framework administered by the Commission and any reference to 'regulatory framework' or 'regulation' refers only to that administered by the Commission (unless otherwise stated).

1.2 Small-scale networks

There are currently 83 licensees licensed by the Commission, some of which provide more than one service.⁵ The majority of licensees provide water or sewerage services. Table 1 provides a breakdown of licensees by industry.

Table 1: Number of licensees by industry

Industry	Number of licensees ⁶
Water	36
Sewerage/community wastewater management system (CWMS)	50
Electricity	8
Gas	5

² Section 6(a) of the ESC Act.

³ Section 6(b) of the ESC Act.

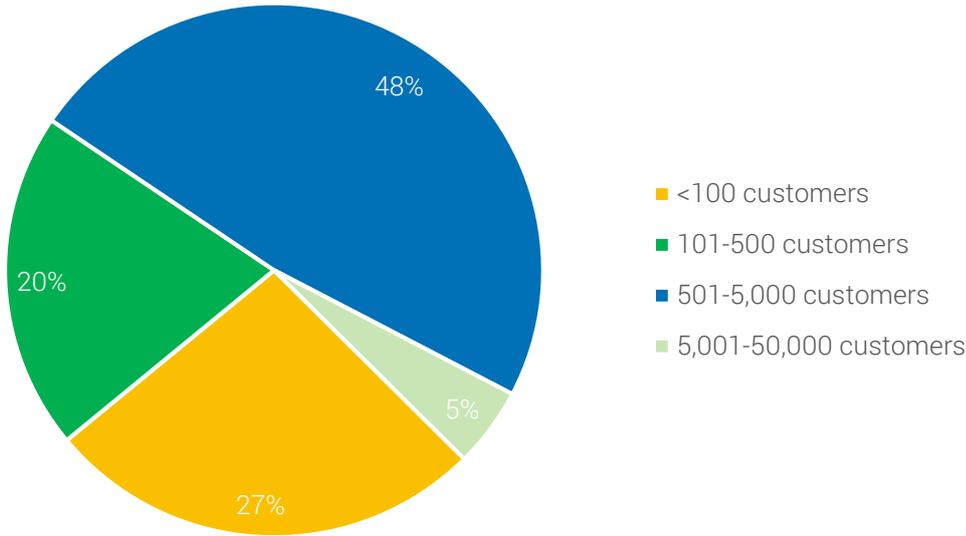
⁴ Appendix 2 of the Framework and Approach paper provides a list of entities that regulate small-scale networks and the functions they perform.

⁵ 83 licensees as at 30 June 2020. There were 72 licensees as at 30 June 2015.

⁶ Some licensees provide more than one service so the total does not add to 83.

Licensees are diverse. They include local government, private operators and not-for-profit organisations. The networks are mostly located in outer metropolitan and regional areas across the State, serving small communities. In many cases, the networks emerged over time to meet a community need for the provision of an essential service. In total, the networks provide services to around 120,000 customers, although, in general, each licensee has a small number of customers from which they can recover their costs. Figure 1 illustrates the percentage of networks by customer size.

Figure 1: Small-scale networks by customer size⁷



From a customer perspective, choice is generally limited to being part of that network or being self-sufficient. Most customers purchase different services (for example, electricity and water) from different licensees.

Overall, the Commission’s small-scale network regulatory framework has to accommodate considerable diversity of networks, while also meeting the Commission’s statutory objectives and minimising the costs of administering regulation with respect to those objectives.

1.3 The Inquiry

The Commission considers an Inquiry into the way in which it regulates small-scale networks is necessary and desirable to ensure that the regulatory framework it applies remains consistent with its primary statutory objective (see section 1.1). The Commission also considers the Inquiry important to ensure regulation of small-scale networks is proportionate and responsive to recent and emerging issues. Those issues can relate to changing technological, operational, environmental or other factors impacting the delivery of water and sewerage retail services, and the sale and/or supply of electricity and gas services to South Australians through small-scale networks.

As stated in the Inquiry’s terms of reference (Appendix 1), the Commission is:

⁷ Based on 2018-19 annual performance reports.

- ▶ inquiring into appropriate regulatory arrangements administered by the Commission under the ESC Act (including subsidiary regulatory instruments made by the Commission such as industry codes) and price regulation arrangements for small-scale network operations
- ▶ analysing consumer protections associated with the delivery of small-scale network water, sewerage and energy services, with a view to ensuring that any regulatory arrangements it administers are targeted, efficient and appropriate, and
- ▶ identifying an appropriate regulatory framework that:
 - has relevance for customers and for licensees and exempted entities currently providing small-scale network water, sewerage and energy services, and
 - will be relevant in the context of new participants, business models and/or technologies which could deliver more effective and innovative outcomes for customers in the future.

Overall, the outcome sought from this Inquiry is to identify a regulatory framework covering the relevant services, that:

- ▶ provides for a price-service-quality offering that meets the specific needs of the customers of a small-scale network, subject to legislative requirements
- ▶ ensures incentives and accountability are with the right parties
- ▶ minimises the regulatory cost by ensuring regulation is effective, targeted, fit-for-purpose and capable of responding to external influences, and
- ▶ creates consistency across regulatory instruments where appropriate.

1.4 Consultation

This Draft Inquiry Report has been informed by submissions received in response to the Framework and Approach paper released in June 2019,⁸ which was itself informed by submissions to a previous Issues Paper. The Framework and Approach paper provided high-level options/strategic approaches for the regulation of small-scale networks and sought stakeholder views on those.

The Commission received submissions to the Framework and Approach paper submissions from:⁹

- ▶ Licensees or industry representative bodies:
 - Adelaide Hills Council
 - Alexandrina Council
 - Berri Barmera Council
 - City of Marion
 - City of Tea Tree Gully
 - Clean Energy Council
 - Environmental Land Services

⁸ See the Commission's Inquiry into regulatory arrangements for small-scale and off-grid water, sewerage and energy services, available at <https://bit.ly/2JpPaU1>

⁹ Public (non-confidential) submissions to the Inquiry Terms of Reference are available at <https://bit.ly/2JpPaU1>.

- Origin, and
 - Wudinna District Council.
- Customers or customer representative bodies:
- Private individual – S Kaye
 - Private individual – P and Y Tiss
 - South Australian Council of Social Service (**SACOSS**), and
 - Tea Tree Gully CWMS Residents' Action Group.
- Government Departments:
- Department for Energy and Mining (**DEM**).

The Commission also provided presentations on its Framework and Approach paper to several licensees, government departments and community groups (see Table 2).

Table 2: Presentations to stakeholders

Engagement	Date	Level of attendance
Local Government Association of South Australia	2/07/2019	One representative
ELGAS Ltd	9/07/2019	One representative
Legatus Group CWMS Committee	19/07/2019	Representatives of Legatus Group local government and regulators of CWMS
Department for Energy and Mining	25/07/2019	Four representatives
EWOSA	26/07/2019	Two representatives
Robusto Investments Pty Ltd	30/07/2019	One representative
Monarto Water Network Ltd	31/07/2019	One representative
Tatiara District Council	31/07/2019	Three representatives
The Corporation of the City of Marion	1/08/2019	Two representatives
Environmental Land Services (Aust) Pty Ltd	8/08/2019	One representative
Clare & Gilbert Valleys Council	20/08/2019	Three representatives
Alano Utilities Pty Ltd	21/08/2019	Two representatives
Department for Environment and Water	22/08/2019	Two representatives
Local Government CWMS Conference	23/08/2019	Representatives of local government providing CWMS services and regulators of CWMS
Australian Energy Market Commission	3/09/2019	Two representatives
Southern and Hills Local Government Association	12/09/2019	Representatives of five local government agencies ¹⁰
Tea Tree Gully CWMS Residents' Action Group	27/09/2019	Eighteen residents/customers of the City of Tea Tree Gully

¹⁰ Adelaide Hills Council, Alexandrina Council, Kangaroo Island Council, Mount Barker District Council, City of Victor Harbor and the District Council of Yankalilla.

1.5 Next steps

The Commission seeks comments on this Draft Inquiry Report by Friday, 2 October 2020. For details on how to make submissions, please see the inside cover of this paper. The extended period of consultation is in recognition of the special demands the Covid-19 pandemic may place on many of our stakeholders.

The Commission would be pleased to meet with stakeholders, whether individually or with representative organisations, to discuss the model outlined in this Draft Inquiry Report. If you or your organisation wish to meet with the Commission, please use the contact details on the inside cover of this paper. Such meetings will need to be conducted in a manner complying with Covid-19 social-distancing requirements.

The Final Report is due to be released in February 2021.

2 Analysis, options and the proposed way forward

Summary

The current regulatory framework is performing effectively but there is the potential for further enhancements and revisions that would protect consumers' long-term interests.

Having considered current performance, regulatory options and stakeholder feedback, the Commission proposes:

- ▶ to implement a verified trust and accountability model (VTA model) for the regulation of small-scale networks, with details of its proposed implementation
- ▶ that the next step in the harmonisation project is to identify with stakeholders any potential changes within the codes and licences that might provide a net benefit (relative to the existing regulatory arrangements) and how such changes might be reflected in codes and/or licences, and
- ▶ to mandate licensee membership of the Energy and Water Ombudsman SA scheme.

This chapter discusses the current statutory framework for the regulation of small-scale networks, the way the Commission applies that framework and its effectiveness. It then discusses the options for changes to the regulation of small-scale networks suggested in the Framework and Approach paper, and stakeholder responses. Finally, it sets out the Commission's proposed model for the regulation of small-scale networks.

2.1 Statutory framework

The water, electricity and gas industries are declared to be regulated industries for the purposes of the ESC Act. The Commission's functions in industries declared to be regulated under the industry regulation Acts¹¹ are set out in section 5 of the ESC Act. Together, the ESC Act and industry regulation Acts allow the Commission to regulate small-scale network service providers to protect the long-term interest of consumers with respect to price, quality and reliability of essential services, by:

- ▶ licensing service providers¹² and performing other functions under the relevant industry regulation Acts
- ▶ making, monitoring the operation of, and reviewing from time to time, codes and rules relating to the conduct or operations of a regulated industry or regulated entities¹³
- ▶ monitoring and enforcing compliance with, and promoting improvement in standards and conditions of service and supply under relevant industry regulation Acts, and
- ▶ regulating prices.¹⁴

The industry regulation Acts require:

¹¹ The relevant industry regulation Acts for this Inquiry are the *Water Industry Act 2012*, *Electricity Act 1996* and *Gas Act 1997*.

¹² *Water Industry Act 2012*, section 19, *Electricity Act 1996*, section 16 and *Gas Act 1997*, section 20.

¹³ ESC Act, Part 4, *Water Industry Act 2012*, section 25, *Electricity Act 1996*, section 21 and *Gas Act 1997*, section 25.

¹⁴ ESC Act, Part 3, *Water Industry Act 2012*, section 35, *Electricity Act 1996*, section 35A and *Gas Act 1997*, section 33.

- ▶ That a person providing a small-scale network service must hold a licence as follows:
 - water and sewerage: retail licence
 - off-grid electricity: generation, distribution and retail licences as applicable,¹⁵ and
 - reticulated gas (natural and LPG): distribution and retail (LPG only) licences as applicable.
- ▶ The Commission to consider an application for a licence having regard to factors specified in the industry regulation Acts, with the Commission given the power to issue or refuse to issue a licence.
- ▶ The Commission to make licences subject to conditions that it determines, such as requiring:
 - compliance with applicable codes or rules¹⁶ made under the ESC Act
 - the licensee to maintain specified accounting records and to prepare accounts according to specified principles¹⁷
 - a specified process to be followed to resolve disputes between the licensee and its customers¹⁸
 - the licensee to monitor and report as required by the Commission on indicators of service performance determined by the Commission,¹⁹ and
 - water industry entities to provide, in the manner and form determined by the Commission, such other information as the Commission may from time to time require.²⁰

The industry regulation Acts provide the Commission with discretion in the form and manner in which regulation is implemented (for example, whether by way of licence conditions, codes and/or guidelines).²¹ However, once the Commission adopts the form of regulation, the licensee is obliged to comply as a result of the conditions placed in its licence.

The relationship between the ESC Act and the industry regulation Acts is illustrated in Figure 2.

¹⁵ Where off-grid electricity licensees provide multiple services under the *Electricity Act 1996*, the Commission has issued one licence document which contains provisions related to each service. Generally, the licences are divided into the following chapters: general, generation, distribution, connection, sale and supply (covering retailing).

¹⁶ Part 4 of the ESC Act provides the Commission with broad powers to make, vary and amend industry codes or rules.

¹⁷ For example, s25(1)(f), *Water Industry Act 2012*.

¹⁸ For example, s25(1)(g), *Water Industry Act 2012*.

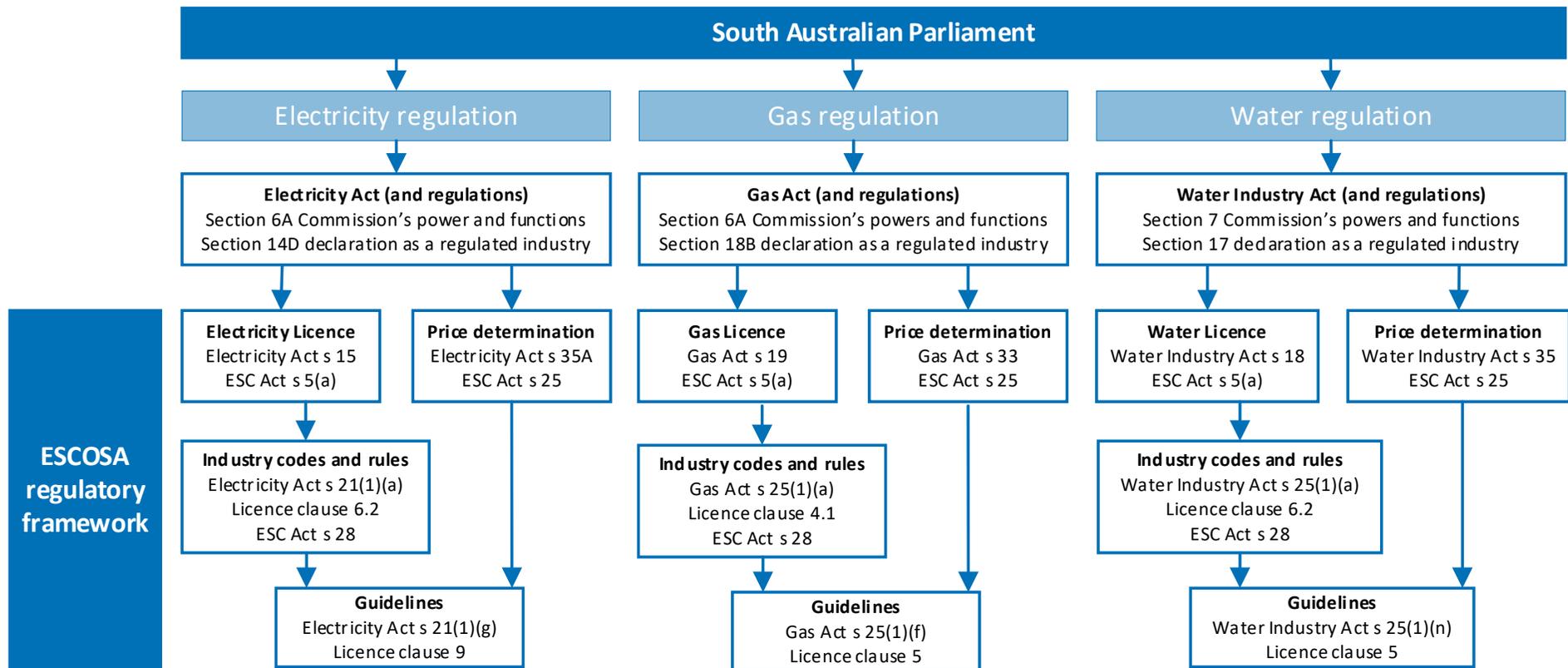
¹⁹ For example, s25(1)(i), *Water Industry Act 2012*.

²⁰ For example, s25(1)(n), *Water Industry Act 2012*.

²¹ In exercising that discretion, the Commission must still have regard to all relevant statutory factors such as those set out in the industry Acts and section 6 of the ESC Act.

1

Figure 2: The Commission's powers and functions in small-scale networks²²



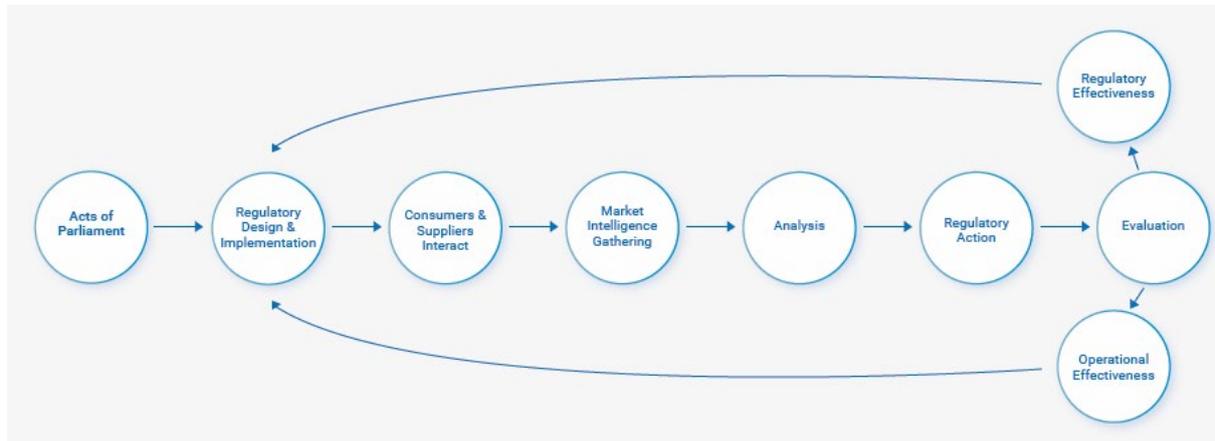
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²² For how the Commission currently applies its regulatory powers and functions to small-scale networks see section 2.3

2.2 Commission's business model

The Commission operates a regulatory business model as shown in Figure 3 below.²³ This business model reflects the Commission's key functions of regulatory design, market intelligence and analysis, and regulatory action, all underpinned by evaluation of its regulatory performance and operational systems.

Figure 3: Commission Business Model



This chapter covers the Evaluation phase of the business model, identifying some Regulatory Effectiveness issues in section 2.4. Chapters 3 to 6 follow the continuous improvement loop to the Regulatory Design & Implementation phase in proposing a revised regulatory framework. This revised framework seeks to address the identified Regulatory Effectiveness issues, as well as identifying Operational Effectiveness improvements it could deliver. Key deliverables of the proposed regulatory framework are enhanced Marketing Intelligence Gathering and Analysis, which seek to drive better Regulatory Action.

2.3 How regulation is currently applied

The differences in the Commission's regulation of small-scale networks can be summarised as follows:

- ▶ For water and sewerage services, the Commission has issued:²⁴
 - a retail code²⁵

²³ Commission, *Strategy 2020-2023*, May 2020, pp.14-15, available at <https://www.escosa.sa.gov.au/about-us/strategic-plans>.

²⁴ Copies of minor and intermediate licences can be accessed from the Commission's licence/exemption register available at <https://www.escosa.sa.gov.au/industry/water/licensing/licence-register>.

²⁵ Essential Services Commission, *Water Retail Code-Minor and Intermediate Retailers*, WRC-MIR/02, March 2015, available at <https://www.escosa.sa.gov.au/ArticleDocuments/429/20150311-Water-WaterRetailCode-MIR-02.pdf.aspx?Embed=Y>.

- a reporting/information requirements guideline,²⁶ with an accompanying explanatory memorandum²⁷
 - a compliance system and reporting guideline²⁸ and enforcement policy,²⁹ and
 - a price determination, which is currently in operation.³⁰
- For off-grid electricity services:³¹
- there are no retail codes or guidelines, with all requirements (including customer protection and reporting/information requirements³²) set as licence conditions
 - the Commission has published an energy compliance guideline³³ and enforcement policy,³⁴ and
 - the Commission has not made a price determination.
- For reticulated gas services, the following applies in respect of LPG networks:³⁵

²⁶ Essential Services Commission, *Water Regulatory Information Requirements for Minor and Intermediate Retailers*, Water Industry Guideline No.3, WG3/04, July 2015, available at <https://www.escosa.sa.gov.au/ArticleDocuments/398/20150727-Water-InformationRequirementsGuidelineNo3-MinorInte.pdf.aspx?Embed=Y>.

²⁷ Essential Services Commission, *Water Regulatory Information Requirements for Minor and Intermediate Retailers*, Water Industry Guideline No.3, WG3/04, Explanatory Memorandum, September 2015, available at <https://www.escosa.sa.gov.au/ArticleDocuments/399/20150930-Water-GuidelineNo3-ExplanatoryMemorandum-WIG3-04.pdf.aspx?Embed=Y>.

²⁸ Essential Services Commission, *Water Industry Guideline No 1-Compliance System and Reporting*, WG1/04, July 2016, available at <https://www.escosa.sa.gov.au/ArticleDocuments/952/20160706-Water-GuidelineNo1-ComplianceSystemsReporting-WG1-04.pdf.aspx?Embed=Y>.

²⁹ Essential Services Commission, *Enforcement Policy*, version 2.5, September 2013, available at https://www.escosa.sa.gov.au/ArticleDocuments/580/130905-EnforcementPolicy_V2-5.pdf.aspx?Embed=Y.

³⁰ Details of the minor and intermediate retailers price determination available at <https://www.escosa.sa.gov.au/industry/water/retail-pricing/minor-and-intermediate-retailers-price-determination>. The price regulation provisions of the *Water Industry Act 2012* also include a framework for the Treasurer to issue Pricing Orders. Such a pricing order is in force. This requires the Commission to adopt or apply the National Water Initiative (NWI) Pricing Principles when making a price determination. These NWI Pricing Principles relate to cost recovery, pricing and the pricing transparency of drinking water, recycled water and stormwater services. The Pricing Order excluded the principles for recovering the costs of water planning and management activities. While not required to do so, the Commission has determined to adapt and apply these Pricing Principles to the pricing of CWMS services.

³¹ Copies of off-grid licences can be accessed from the Commission's licence/exemption register available at <https://www.escosa.sa.gov.au/industry/electricity/licensing/licence-register>.

³² For reporting/information requirements, refer to annual return obligation.

³³ Essential Services Commission, *Compliance Systems and Reporting*, Energy Industry Guideline No.4, EG4/4, September 2013, available at https://www.escosa.sa.gov.au/ArticleDocuments/580/130905-EnergyGuidelineNo4_ComplianceSystemsReporting_G4-4.pdf.aspx?Embed=Y.

³⁴ Essential Services Commission, *Enforcement Policy*, version 2.5, September 2013, available at https://www.escosa.sa.gov.au/ArticleDocuments/580/130905-EnforcementPolicy_V2-5.pdf.aspx?Embed=Y.

³⁵ Copies of reticulated LPG licences can be accessed from the Commission's licence/exemption register available at: <https://www.escosa.sa.gov.au/industry/gas/licensing/licence-register>.

- an industry code³⁶
- licensee reporting/information requirements provided as general obligations contained in the industry code³⁷
- an enforcement policy,³⁸ and
- the Commission has not made a price determination.

2.3.1 Consumer protections

The consumer protections in each industry are broadly similar. However, there are some differences in the details of requirements between industries. For example, there are different requirements for the notification periods for planned interruptions to services and the processes for estimating bills between industries.³⁹ Further, the regulatory instruments requiring licensees to provide protections for customers are different, with requirements split between licences and industry codes.

These regulatory instruments require the licensee to prepare and submit for the Commission's approval procedures for the management and resolution of customer enquiries and disputes, in accordance with AS ISO 10002-2006 (as amended from time to time).⁴⁰ For example, clause 3.2 of the *Water Retail Code – Minor and Intermediate Retailers* establishes the requirement for these dispute procedures to provide customers with the ability to have their enquiry or complaint escalated first within the retailer and then subsequently to an external independent party for resolution, in the event that the complaint remains unresolved.⁴¹ For this purpose, the Commission estimates the majority of local government licensees have nominated Ombudsman SA as their external dispute resolution body.⁴² Nine water and one electricity licensee have joined the EWOSA scheme.⁴³ Other licensees have chosen to rely upon private, independent bodies.⁴⁴

³⁶ Essential Services Commission, *Reticulated LPG Industry Code*, RLIC/01, January 2014, available at https://www.escosa.sa.gov.au/ArticleDocuments/653/130404-ReticulatedLPGIndustryCode_RLIC-01.pdf.aspx?Embed=Y.

³⁷ Refer clause 2.1 of the Reticulated LPG Industry Code.

³⁸ Essential Services Commission, *Enforcement Policy*, version 2.5, September 2013, available at https://www.escosa.sa.gov.au/ArticleDocuments/580/130905-EnforcementPolicy_V2-5.pdf.aspx?Embed=Y.

³⁹ For example, clause 3.2.4 of the Reticulated LPG Industry Code requires a licensee to provide affected customers with at least five business days' notice of a planned outage. Whereas, clause 4.3 of the *Water Retail Code – Minor and Intermediate Retailers* requires at least four business days' notice.

⁴⁰ For example, section 3.2, *Water Retail Code – Minor and Intermediate Retailers*, WRC-MIR/01, July 2013, available at <https://www.escosa.sa.gov.au/ArticleDocuments/413/130627-WaterRetailCode-MinorIntermediateRetailers.pdf.aspx?Embed=Y>.

⁴¹ Commission, *Water Retail Code – Minor and Intermediate Retailers*, WRC-MIR/01, *Explanatory Memorandum*, June 2013, p.4, available at <https://www.escosa.sa.gov.au/ArticleDocuments/615/130627-WaterRetailCode-MinorIntermediateRetailers-ExplanatoryMemo.pdf.aspx?Embed=Y>.

⁴² This is based on the Commission reviewing the websites of a random sample of 20 out of 62 local government licensees (29 April 2020) for their dispute resolution procedures. All licensees in the sample nominated Ombudsman SA, with one licensee nominating Mediation SA and another the Office for Public Integrity, in addition to Ombudsman SA. Typical wording was: *'When advising a complainant of the outcome of an investigation of a complaint, Council will provide information about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman'*.

⁴³ EWOSA website viewed 8 April 2020, available at <https://ewosa.com.au/members/our-scheme-members>

⁴⁴ For example, as of the 16 April 2020, Cowell Electric Supply Pty Ltd has used a nominated person employed by the Outback Communities Authority (see <https://www.oca.sa.gov.au/>). However, the Australian Energy Regulator granted Cowell Electric an individual exemption for the sale and distribution of electricity at Iron Knob and Pimba on 26 September 2019 (see <https://www.aer.gov.au/communication/cowell-electric-supply-pty-ltd->

2.3.2 Price setting

For the water industry, the Commission has made a determination pursuant to the price determination powers under Part 3 of the ESC Act, as authorised by Part 4, Division 3 of the *Water Industry Act 2012*,⁴⁵ and has included price disclosure requirements in the Water Retail Code – Minor and Intermediate Retailers⁴⁶. This determination, which only applies to water and sewerage licensees, is a combination of a price monitoring framework and pricing principles, which are consistent with the National Water Initiative (NWI) Pricing Principles.

Under this form of regulation, licensees retain the responsibility for determining their own prices, but must do so in conformance with pricing and related principles set out by the Commission in the determination. This provides transparency into a licensee's price setting process by requiring it to:

- ▶ take certain principles into account in determining its costs and developing its prices, and
- ▶ demonstrate to the Commission that it has done so.

For the electricity industry, the Commission requires licensees to publish prices on their websites. Further, just over 50 percent of small-scale network electricity customers⁴⁷ are supplied electricity under the Remote Area Energy Supply (RAES) scheme.⁴⁸ The cost of electricity under the scheme is subsidised by the South Australian Government, and tariffs are set based on prices in the on-grid market (see section 2.4.1.2), limiting the need for the Commission to consider making a price-determination.

For the gas industry, the Commission requires transparent information about LPG prices to be provided directly to customers on entering a market contract. On a regular basis thereafter, prices should be

[granted-individual-exemption-for-the-sale-and-distribution-of-electricity-at-iron-knob-and-pimba](#)). Under the terms of these exemptions Cowell Electric is required to seek membership of EWOSA.

⁴⁵ Essential Services Commission, *Subsequent Determination to vary the 2013-2017 Price Determination for Minor and Intermediate Retailers*, to apply from 1 July 2017, available at

<https://www.escosa.sa.gov.au/ArticleDocuments/1099/20170627-Water-SubsDeterminationVary2013-2017PDMIR-Final.pdf.aspx?Embed=Y>

⁴⁶ Essential Services Commission, *Water Retail Code – Minor and Intermediate Retailers (WRC-MIR/01)*, Explanatory Memorandum, June 2013, Clause 3.4, p.5, available at

[https://www.escosa.sa.gov.au/ArticleDocuments/413/130627-WaterRetailCode-](https://www.escosa.sa.gov.au/ArticleDocuments/413/130627-WaterRetailCode-MinorIntermediateRetailers1.pdf.aspx?Embed=Y)

[MinorIntermediateRetailers1.pdf.aspx?Embed=Y](#). This clause establishes the requirement for licensees to publicly disclose any prices, fees and charges applicable to the provision of a retail service.

⁴⁷ Based on small-scale network customer numbers reported to the Commission and reported RAES customer numbers, as follows:

– In 2018-19, 6,420 customers were supplied through off-grid electricity networks – see Commission, *Off-Grid Energy Networks Regulatory Performance Report 2018-19*, available at

<https://www.escosa.sa.gov.au/ArticleDocuments/539/20200313-Energy-OffgridNetworksPerformanceReport2018-19-FactSheet.pdf.aspx?Embed=Y>

– Customer numbers for the RAES State/Independent scheme (around 2,400 customers) and RAES Aboriginal Communities scheme (around 1,000 customers), as provided by the Department of Energy and Mining, available at:

http://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_area_energy_supply/raes_communities and

http://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_area_energy_supply/raes_aboriginal_communities respectively (website viewed 15 April 2020).

⁴⁸ The RAES scheme comprises the RAES State/Independent scheme and the RAES Aboriginal Communities (AC) scheme. Refer DEM website at <https://www.sa.gov.au/topics/energy-and-environment/energy-supply/remote-areas-energy-supplies-scheme> (website viewed 15 April 2020).

available from licensees' websites. This is based on the assessment that reticulated LPG faces competition from substitutes such as bottled LPG and electricity.⁴⁹

2.3.3 Service standards

Larger service providers, such as SA Water, are required to adopt a best endeavours approach to achieving specified service standard performance targets (for example, in relation to customer service and complaint handling or field crew attendances). However, the Commission has generally not found the need to set similar standards for small-scale licensees (apart from electricity licences, which contain specified quality and interruption of supply obligations⁵⁰). However, there are general service standard obligations which the Commission monitors. For example, all water and sewerage licensees must provide a reliable supply to customers, minimise the frequency and duration of interruptions, and have in place policies, practices and procedures to minimise the impact of unplanned interruptions.⁵¹

The Technical Regulator monitors compliance with legislation and applicable technical standards in the electricity, gas and water industries, aiming to ensure the safety of workers, consumers and property. There are other regulators that impose and enforce standards on licensees in relation to other matters, such as SA Health and the Environment Protection Authority (see section 1.1).

2.3.4 Monitoring and reporting

The Commission publicly reports each year on licensees' regulatory performance, based on the annual reports that they submit.⁵² To produce those reports, and dependent on industry, the Commission collects information including:

- ▶ financial data such as income, expenses, operating surplus
- ▶ operational performance information such as number of customers, complaints, restrictions, and customers on financial hardship programs
- ▶ quality and reliability data such as planned and unplanned interruptions, and
- ▶ asset information such as asset schedules and technical specifications.

2.4 The effectiveness of the current regulatory regime

As part of this Inquiry, the Commission is reviewing the effectiveness of its regulation of small-scale networks. To do this, the Commission has considered whether there is evidence that licensees are

⁴⁹ Essential Services Commission, *Regulatory arrangements for reticulated LPG Networks Final Decision*, April 2013, p.37, available at: <https://www.escosa.sa.gov.au/ArticleDocuments/653/130404-RegulatoryArrangementsForReticulat.pdf.aspx?Embed=Y>

⁵⁰ For example, see clause 21 (quality of supply) and clause 22 (interruption of supply) of the Cowell Electric Supply Pty Ltd Electricity Retail, Distribution and Generation Licence which specifies voltage performance bands and required periods of notice to customers for planned supply interruptions. A copy of the licence is available at <https://www.escosa.sa.gov.au/ArticleDocuments/531/20191016-Electricity-RetailDistributionGenerationLicence-CowellElectricalSupply.pdf.aspx?Embed=Y> (website viewed 9 April 2020).

⁵¹ Commission, *Minor and Intermediate Retailers Regulatory Framework – Information Sheet*, available at <https://www.escosa.sa.gov.au/ArticleDocuments/547/20190522-Water-MIR-RegulatoryFramework-InformationSheet.pdf.aspx?Embed=Y>.

⁵² Refer Essential Services Commission Annual Performance Reports, available at: <https://www.escosa.sa.gov.au/industry/water/regulatory-reporting/regulatory-performance-reports> (water/sewerage) and <https://www.escosa.sa.gov.au/industry/gas/regulatory-reporting/regulatory-performance-reports> (electricity/gas).

behaving in a manner that has a detrimental effect on customer outcomes. That is, to the detriment of price, quality or reliability of services. The following sections discuss the findings of the assessment to date.⁵³

2.4.1 Pricing and asset sustainability

Regulating prices is about protecting customers with respect to the prices charged for services, and promoting the ongoing provision of services. In the absence of regulatory intervention, licensees' pricing strategies may under-recover or over-recover the cost of service. Ideally, licensees should make every effort to recover from their customers the full, efficient costs of providing the service at a sustainable level – with the expectation that licensees regularly invest to ensure service sustainability, rather than allowing the service to degrade.

The Commission has broad pricing powers, and is able to make determinations regulating prices, conditions relating to prices and price-fixing factors for goods and services in any manner it considers appropriate, subject to the provisions of the relevant industry Act.⁵⁴ Price determinations can be an appropriate regulatory instrument given that licensees are generally monopoly service providers within the geographic area where they operate and, as a result, do not have the benefit of competition to drive economically efficient behaviour.⁵⁵ Price regulation seeks to replicate the outcomes of a competitive market, constraining prices to levels reflecting prudent and efficient costs for services valued by customers, for delivery on a sustainable basis.

2.4.1.1 Pricing of water and sewerage and long-term asset sustainability

Water and sewerage licensees must take the NWI pricing principles into account when setting prices for their water and sewerage services.⁵⁶ In 2018-19, 71 percent of those licensees reported full compliance with all of the relevant pricing principles.⁵⁷ The remaining 29 percent reported meeting some but not all of the relevant pricing principles. However, it should be noted that 'full compliance' in a

⁵³ For the full assessment, see Essential Services Commission Framework and Approach, available at: <https://www.escosa.sa.gov.au/projects-and-publications/projects/inquiries/Inquiry-into-regulatory-arrangements-for-small-scale-water-sewerage-and-energy-services/Inquiry-into-regulatory-arrangements-for-small-scale-and-off-grid-water-gas-and-electricity-services>

⁵⁴ Section 25 of the ESC Act.

⁵⁵ This is similar to the justification the Commission uses to make a price determination that applies to SA Water – see Commission, *SA Water Regulatory Determination 2020*, Draft Determination: Statement of Reasons, March 2020, p.10, available at <https://www.escosa.sa.gov.au/ArticleDocuments/21462/20200304-Water-SAWRD20-DraftDecision-StatementOfReasons.pdf.aspx?Embed=Y>.

⁵⁶ A Pricing Order issued by the Treasurer under the *Water Industry Act 2012* requires the Commission to adopt or apply the NWI pricing principles (with limited exceptions) when making a price determination for retail services. The NWI pricing principles relate to cost recovery, pricing and transparency for drinking water, recycled and stormwater services, including fully recovering the costs of capital assets using return on capital and return of capital (depreciation). Although the NWI pricing principles do not apply to sewerage services, the Commission has decided to treat sewerage services, including CWMS, in a like manner to drinking water services, providing consistency in price regulation between these services. See Commission, *Economic Regulation of Minor and Intermediate Retailers of Water and Sewerage Services*, Final Decision, June 2013, p.3, available at <https://www.escosa.sa.gov.au/ArticleDocuments/413/130627-EconomicRegulationMinorIntermediateRetailer.pdf.aspx?Embed=Y>.

⁵⁷ Essential Services Commission, *Water: Minor and Intermediate Retailers Regulatory Performance Report 2018-19*, 2019 available at <https://www.escosa.sa.gov.au/industry/water/regulatory-reporting/regulatory-performance-reports>.

particular year need not mean the licensee is fully recovering the cost of service in that year – full cost recovery occurs over time.⁵⁸

Many licensees are still transitioning to full cost recovery and are gradually adjusting prices in order to manage the overall price increase to customers. Some licensees are limited in their ability to recover the cost of service provision due to a small customer base. Others cite public benefit reasons (such as supplying schools or community areas) for not seeking to fully recover costs. Overall, this suggests customers of those networks are not being charged excessive prices, unless there is evidence indicating the cost base of any specific network is demonstrably inefficient. To date, the Commission is not aware of any such evidence.

However, while excessive pricing does not appear to be a concern, pricing in a manner that does not fully recover costs for too long a period might place longer-term sustainability at risk. As reported in the 2018-19 Minor and Intermediate Retailers Regulatory Performance Report,⁵⁹ the Commission does have some concerns over the long-term sustainability of the small-scale network asset stock and notes the importance of maintaining capital investment levels over time to smooth pricing impacts and maintain service sustainability.

In circumstances where capital investment levels are not maintained, the level of asset deterioration can eventually result in the need for wholesale asset replacement in a compressed time frame, with customers potentially facing both a material increase in prices and unawareness of the poor state of the assets.

The Commission considers that customers should have greater transparency regarding the maintenance and renewal of the assets associated with delivering an essential service, and the consequential implications for pricing and service sustainability. This places greater emphasis on the role and responsibility of the essential service provider in managing and communicating this competently.

2.4.1.2 Pricing of electricity

Electricity is supplied to remote South Australian towns and remote Aboriginal communities⁶⁰ through the RAES scheme (see section 2.3.2). The customers who are charged for their electricity consumption⁶¹ pay tariffs which are aligned to the average of market/discount offers provided by South Australian on-grid retailers, noting that the RAES tariffs are reviewed and set annually by the Minister for Energy and Mining.⁶²

⁵⁸ For example, a licensee may decide to smooth price increases over time by imposing a lower price increase in initial year(s) (and hence under-recover in those year(s)).

⁵⁹ The minor and intermediate retailer regulatory performance report provides information on the operation of water industry licensees with 50,000 or fewer connections. The 2018-19 report is available at <https://www.escosa.sa.gov.au/industry/water/regulatory-reporting/regulatory-performance-reports>.

⁶⁰ For a list of the remote Aboriginal communities supplied electricity under RAES see Department for Energy and Mining available at http://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_a_rea_energy_supply/raes_aboriginal_communities. (website viewed 15 April 2020),

⁶¹ SACOSS notes that the aboriginal communities of Anangu Pitjantjatjara Yankunytjatjara (APY), Yatata on Aboriginal Lands Trust (ALT) and Oak Valley on Maralinga Tjarutja (MT) are transitioning from non-payment of electricity to a payment scheme. Source: SACOSS, submission to *Small-Scale Networks Inquiry – Framework and Approach*, 22 October 2019, available at <https://bit.ly/2JpPaU1>

⁶² A copy of the tariffs applying from 1 November 2019, are available at http://www.energymining.sa.gov.au/_data/assets/pdf_file/0020/315443/1-RAES-Tariffs.pdf.

In addition, electricity licensees must publish prices on their website. While this provides a level of transparency for customers and assures that those customers under the scheme face pricing consistent with on-grid competitive rates, it does not necessarily mean that pricing reflects the efficient costs of each off-grid network.

In that overall context, the Commission is not aware of any evidence suggesting that customers are being overcharged or that there are network asset sustainability issues.⁶³

2.4.1.3 Pricing of LPG

Licensees providing reticulated LPG services must publish prices on their website. In addition to this form of price monitoring, reticulated LPG faces some competition from substitutes.⁶⁴ If substitutes are available, prices in the reticulated LPG market are unlikely to be excessive. To date, the Commission has not been presented with any evidence to suggest that prices are inefficient, or that viable substitutes do not exist, or that there are network asset sustainability issues.

2.4.2 Service levels

There is the potential for customers to face ongoing poor service levels (including a failure to deal with complaints) where customers lack access to alternative suppliers.⁶⁵ That is why all licensees are required to have enquiries, complaints and dispute resolution procedures in place that have been approved by the Commission. These procedures should clearly set out how customers can make an enquiry or complaint about the services they receive and have escalation steps within them, including to an independent review body when a complaint cannot be resolved by the service provider.

There have been no reported complaints in relation to reticulated LPG network service providers since 2014-15. Also, while not all electricity licensees have to report complaint data, those that do report consistently low complaints.⁶⁶

Only a small number of licensees are responsible for the majority of water and sewerage complaints on a yearly basis. For example, in 2018-19, four licensees accounted for 79 percent of water-related complaints. In the same year, seven licensees accounted for 82 percent of sewerage-related complaints.⁶⁷

Based on the number of customer complaints, the evidence suggests that customers generally do not appear to be expressing dissatisfaction with the service received. However, some pockets of localised concerns arise from time to time and the Commission takes appropriate regulatory action in such

⁶³ Noting the ability for the Government to be able to seek competitive tenders for the provision of RAES services. From 1 April 2016, the South Australian government has contracted Cowell Electricity Supply to support the RAES State and AC electricity assets and infrastructure. Source: Department for Energy and Mining, available at: http://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/remote_a_rea_energy_supply

⁶⁴ Substitutes include bottled LPG and electricity.

⁶⁵ As noted in section 1.2, from a customer perspective, in the case of small-scale networks, choice is generally limited to being part of that network or being self-sufficient. While there is the potential for poor service to occur even where there are alternative suppliers, a customer at least has the option to change – and this in itself may place some pressure on the licensee to perform appropriately.

⁶⁶ The exception being 2017-18, where one service provider accounted for 11 of the 13 complaints.

⁶⁷ Of the licensees with the highest number of complaints (that is, the two groups mentioned) five had complaints for both water and sewerage services. Of those, none recorded a high number of complaints for both services (in other words, they only recorded a high number of complaints for one of the services they provide).

cases. Notwithstanding this, as noted in section 2.4.1.1, the Commission has some concerns over the level of understanding of the long-term sustainability of the small-scale network assets.

2.4.3 Conclusion

While acknowledging that the evidence available is limited, this assessment suggests that, in general, licensees overall do not appear to be behaving to the detriment of their customers, when assessed against the current requirements of the codes and/or licence conditions. This may indicate that the Commission’s current regulatory regime is assisting in achieving desired outcomes. However, that does not preclude changes, especially given the Inquiry’s desired outcome of ensuring that any regulatory arrangements it administers remain targeted, efficient and appropriate.

In particular, the design and administration of a regulatory framework should ensure that customers have transparency regarding how the assets associated with delivering an essential service are being maintained and renewed, as well as the implications that this has for longer-term pricing and service sustainability. This will place greater emphasis on the role and responsibility of the essential service provider in managing and communicating this competently.

In the Framework and Approach paper, the Commission suggested that a move toward a less-prescriptive, more-targeted model may be possible and desirable. The Commission considers this can be achieved while also accommodating the need for greater focus on long-term service sustainability. This should result in tangible benefits for consumers and licensees alike, through emphasising customer engagement and reducing reporting obligations, while also creating greater understanding and transparency of longer-term service sustainability.

2.5 Options presented in the Framework and Approach paper

The Framework and Approach paper proposed four options (see Table 3). In addition, the Commission proposed that all licensees would become members of the EWOSA scheme, on the basis that this would provide:

- ▶ customers with a single, transparent avenue through which to channel complaints that cannot be resolved directly with the service provider, and
- ▶ the Commission with a consistent and coherent view on the level and nature of customer complaints across the industry and for individual licensees over time.

Table 3: Proposed options

	Do not harmonise	Harmonise
Reporting-compliance (includes existing model)	Option 1: do not change the regulatory regime (reporting-compliance approach) and retain existing regulatory instruments.	Option 2: retain the reporting-compliance approach but harmonise between and within industries.
Verified trust and accountability (VTA model) (reflecting a less prescriptive model)	Option 3: adopt a lighter-handed approach and retain existing regulatory instruments, with the Commission able to exempt individual entities (trusted licensees) from reporting requirements.	Option 4: adopt a lighter-handed approach as per Option 3, and harmonise between and within industries.

Stakeholders provided feedback on the options, as summarised in Table 4.⁶⁸

Table 4: Stakeholder responses for option elements

Option element	Stakeholder responses
Prescriptiveness	Licensees and government agencies who responded generally supported reducing the prescriptiveness of small-scale network regulation, providing safety is not compromised. However, SACOSS was concerned that a consequence of reducing prescriptiveness would be a lessening of protections for consumers.
Harmonisation	Stakeholders who responded were generally supportive of harmonisation. However, concerns were raised that the process may lead to more requirements being imposed on some licensees, resulting in imposing regulatory costs for no benefit.
EWOSA membership	Stakeholders who responded generally supported all licensees becoming members of EWOSA. However, Origin disagreed, stating there is no evidence that there is currently an issue with its customer base achieving a satisfactory resolution to a customer complaint. Adelaide Hills Council also disagreed, submitting that it does not see the benefit in joining EWOSA as local government licensees have several complaint handling mechanisms already in place. It was therefore cautious that EWOSA membership may not result in an increased level of service to its customers.

2.6 Outline of the Commission’s proposed regulatory framework

Having considered stakeholder feedback, the Commission proposes three areas of revision to the regulatory framework, as summarised below and explained in more detail in subsequent chapters.

2.6.1 Prescriptiveness

The Commission proposes to address the prescriptiveness of the regulatory regime in a targeted manner through implementation of the VTA model. The Commission considers that the proposed VTA model addresses concerns raised by stakeholders if prescriptiveness is reduced, as explained in Chapter 3.

In particular, the VTA model can reduce reporting requirements for some (trusted) licensees without reducing customer protections, and can provide a targeted response where a licensee fails to behave appropriately. The Commission also notes that the application of the model may improve transparency with respect to the longer-term sustainability of small scale networks, as well as providing greater clarity regarding the performance expectations of small-scale network service providers.

2.6.2 Harmonisation

Although in general stakeholders supported harmonisation in principle, several submitted concerns with the process and ensuring an appropriate outcome was attained. Having regard to those concerns, the Commission is proposing that the next step in the harmonisation project is to identify with stakeholders any potential changes within the codes and licences that might provide a net benefit relative to the existing regulatory arrangements, and how such changes might be reflected in codes and/or licences. The proposed approach is outlined in Chapter 4.

⁶⁸ For all issues raised in submissions and the Commission’s responses see Response to Framework and Approach Paper Submissions, available at <https://bit.ly/2JpPaU1>.

2.6.3 EWOSA membership

The Commission considers EWOSA membership to be an integral component in maximising the benefit gained from the VTA model and proposes that all licensees become members of the EWOSA scheme. The reasoning for this is explained further in Chapter 5.

Questions for consultation

- ▶ Do stakeholders have any fundamental concerns with the proposed regulatory framework as outlined, noting that its proposed implementation is discussed in subsequent chapters?

3 Proposed implementation of the VTA model

Summary

The Commission proposes to assess and categorise licensees as Category A or Category B in order to implement the VTA model.

Category A licensees will be those which the Commission assesses as meeting the competent operation concept (see Box 1). While all licensees would continue to be required to meet customer protection and service obligations (as defined in codes and licences), Category A licensees would have the benefit of reduced reporting obligations. Tailored reporting requirements would apply to Category B licensees. These may reflect existing, or enhanced, reporting requirements on a licensee-by-licensee basis.

Existing licensees, as well as any new service providers applying for a licence, will be assessed for competent operation. For current licensees this assessment would be based on the Commission's experience with the licensee's performance. For new licensees, the assessment would take place as a part of the licensing process.

Licensees will be subject to an ongoing process of verification of competent operation, with categorisation subject to change depending upon a licensee's behaviour in the context of the competent operation concept.

This chapter explains the key concepts of the VTA model, how the Commission proposes to implement the model and its subsequent ongoing operation.

3.1 Key concepts of the VTA model

The Commission is proposing the VTA model as it will enhance the incentives for a licensee to provide a competent operation to the benefit of customers (see Box 1).

It also formalises the assessment of competent operation more explicitly. If a licensee can demonstrate competent operation and, as a result, is a trusted licensee, it benefits in the form of reduced reporting requirements and more flexible general oversight based upon a constructive future relationship with the licensee. This reduces the licensee's regulatory cost without reducing its obligations to customers.

Embedded within the VTA model is the concept that competent operation is a continuous state. This means that a trusted licensee should be able to demonstrate competent operation with minimal preparation at any time, such as through audits (see section 3.5.4).

Box 1: Concepts of the VTA model

Competent operation

A licensee should be able to demonstrate to the Commission's satisfaction that it is sustainably providing essential services that customers want, at the level of quality and reliability that they value, at a price that accounts for their willingness to pay, legislative requirements and affordability. This will be defined as competent operation and incorporate the following licensee actions:

- ▶ customer-focussed, involving consistent and genuine engagement and consultation with customers to deliver the price-service-quality mix valued by customers at the lowest sustainable cost
- ▶ develop, maintain and implement sound and robust long-term financing, asset management and operational plans that underpin the delivery of services in a sustained manner
- ▶ price services in a manner that takes account of efficient costs on a sustainable basis, customer willingness to pay, minimum legislative standards and affordability, noting that there may be trade-offs within these that need to be effectively and transparently managed
- ▶ appropriately account for legislative requirements (not just those arising under the Commission's regulatory framework), and
- ▶ provide, or will provide for, sufficient financial strength to ensure the long-term viability of the service.

Demonstrating competent operation

Licensees must be *accountable* to their customers and the Commission, demonstrating competent operation on a continuous basis. Once licensees can demonstrate competent operation, the Commission will *trust* them (a trusted licensee) to operate their networks with less prescriptive reporting requirements.

In order for a licensee to demonstrate competent operation, and therefore be considered a trusted licensee, it should be able to provide evidence to the Commission's satisfaction (upon request at any time) which demonstrates, on a continuous basis, business practices that support competent operation as defined above – the *verification* process.

Once trust is gained, licensees are presumed to be providing a competent operation and performing appropriately unless evidence is presented to the contrary. Licensees can provide positive evidence to support trust by proactively identifying any issues early with the Commission and actively developing and implementing remedial actions.

The Commission will monitor licensees and gather market intelligence regarding licensees and their operations. Monitoring in this manner means a licensee can gain and lose trust based on its own actions. A loss of trust would signal to the licensee's customers that it is not providing a competent operation. The Commission's response would be directly related to the outcome of the licensee's actions.

3.2 No reduction to customer protections

The Commission does not propose to alter existing customer protections through the implementation of the VTA model. The Commission recognises the important role of customer protections in the provision of essential services and acknowledges stakeholder concerns regarding any reduction in those protections. For example, SACOSS submitted that customers who are experiencing payment difficulties and hardship should continue to have access to support such as payment plans, Centrepay,

concessions applied to their bill and energy efficiency advice. Other stakeholders, such as the Department for Energy and Mining, raised concerns about reducing protections regarding safety.

3.3 Assessing licensees

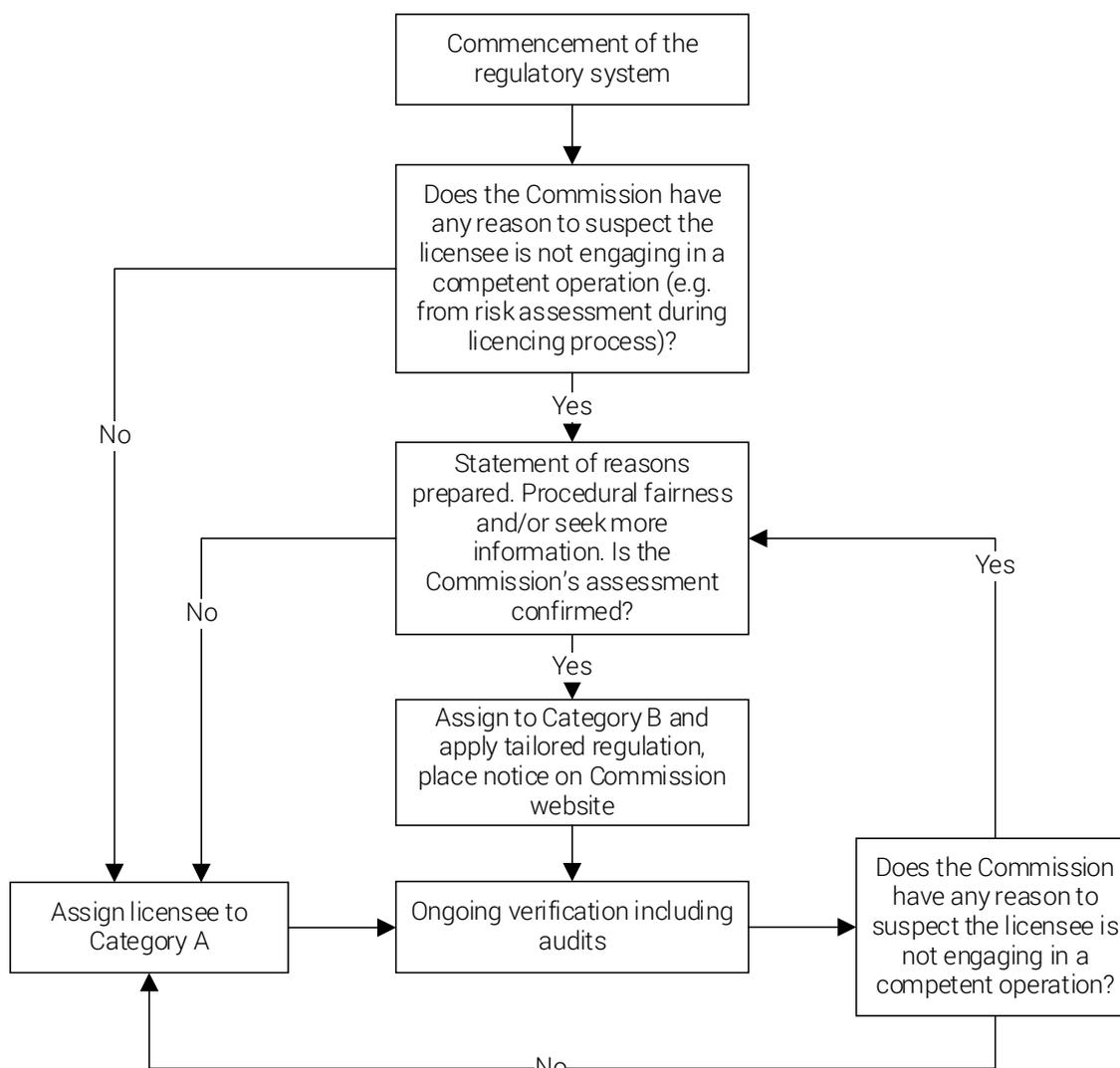
The implementation of the VTA model requires the Commission to identify whether a licensee can demonstrate competent operation. The assessment and categorisation process proposed is illustrated in Figure 4.

In undertaking assessments, the Commission will rely on experience, existing regulatory data and information evidence – in terms of both overall industry outcomes and an individual licensee’s performance – to assign a licensee to either Category A or B.

As outlined in Figure 4, for any licensee where there is reason to doubt its capability or capacity to be defined as a Category A licensee, the Commission will communicate those concerns with the licensee and/or seek more information. This will identify relevant issue(s) and provide an opportunity for the licensee to respond and present evidence on those matters. If the licensee does not provide sufficient evidence to provide assurance of competent operation, the licensee will be assigned to Category B and potentially face tailored regulatory requirements until the identified concerns have been addressed.

The Commission proposes that, where the outcome of an assessment results in a licensee being placed into Category B, this will be published on the Commission’s website (see Figure 4). The Commission considers it in the interest of the customers of each small-scale network to have access to this information, as it provides them with an opportunity to better understand and, if they wish to, question their service provider’s performance. It may also provide added impetus to licensees to behave in an appropriate manner.

Figure 4: Competent operation assessment process



3.3.1 Existing licensees

The Commission's current assessment, based on available evidence is that, in general, licensees overall do not appear to be behaving to the detriment of their customers, when assessed against the current requirements of the codes and/or licence conditions (but noting the question of asset sustainability, see 3.5.3). On that basis, the Commission's expectation is that most current licensees would be placed in Category A on commencement of the VTA model.

3.3.2 New licensees

For a new licensee the assessment will take place as part of the licensing process. It is likely that most new licensees would start in Category A, subject to risk assessment through the licensing process. However, given that the Commission will not have had experience with the level of competency of operation of the new licensee, the Commission will monitor its operations closely for an initial period (for example, one year to 18 months), whichever category it is initially placed into.

3.4 Ongoing verification of competent operation

The ongoing verification process is an important part of the VTA model: a licensee can gain and lose trust, and change categories, based on its own actions. This aligns both compliance and performance risks more directly with a licensee's behaviour.

The Commission will undertake the ongoing verification process to ensure licensees remain categorised correctly based upon how their behaviour aligns with the competent operation concept. This involves the Commission gathering and analysing market intelligence on licensees (including media reports and complaints data from EWOSA), their operations, and the small-scale networks in general, as well as analysing information from its audits of licensees. Box 2 provides an example of how this might work in practice.

Box 2: Stylised example of the ongoing verification process

A Category A licensee has an operational issue which results in a number of customers not receiving gas for eight hours, which is a material matter. The Commission becomes aware of the situation through complaints reported to EWOSA and direct notification from the licensee.

The Commission will analyse the available information, including market intelligence, relating to the licensee, which includes:

- ▶ discussing the details of the complaints with EWOSA, seeking context around the nature of the complaints and if the complaints have been resolved
- ▶ checking the history of the licensee's performance
- ▶ seeking a response from the licensee on the issue behind the complaints, and
- ▶ making contact with the Technical Regulator, given the example is one of reliability, seeking any information it might have on the current issue and, where not already available to the Commission, the details of any previous non-compliance with technical standards or obligations, or previous reports of reliability issues.

In this example, the licensee responds by providing the Commission with a copy of its remedial plan, explaining why this should result in a low risk of a recurrence of the problem. A check of the history of the licensee's performance shows it does not have a history of systemic complaints. The licensee also has a positive history of competent operation, which includes a focus on asset sustainability through appropriate maintenance and investment in its network.

The findings from the investigation are collated, analysed and assessed by the Commission. In this example, on the basis of the licensee being found to:

- ▶ be complying with relevant obligations and generally maintaining a competent operation
- ▶ have promptly apologised to customers for the gas outage, and
- ▶ be taking credible steps to change operations to minimise the chance of a similar shortage recurring,

the licensee would retain the Category A status.

If the evidence had, however, contained material which suggested that the licensee had:

- ▶ failed to respond to previous Commission warnings that the licensee was underinvesting in its network with the assets poorly maintained
- ▶ shown a lack of concern on the part of the licensee as to the particular recent outage, and
- ▶ this was yet another recent example of a failure to demonstrate competent operation,

then the Commission may instead take action to reclassify the licensee to Category B.

In terms of process specifics, if through the ongoing verification process the Commission believes a Category A licensee warrants reclassification to Category B, it will provide a statement of reasons to the licensee. The licensee will have an opportunity to respond and provide sufficient evidence to justify the Commission not implementing a reclassification. As competent operation should be a continuous state for any Category A licensee, the licensee should be able to provide comprehensive transparent information regarding any concern raised by the Commission quickly and effectively.

The Commission will then accept or reject that evidence, with no further opportunities to respond to the statement of reasons provided. If the Commission is not sufficiently assured by any response provided by the licensee, it will be classified as Category B and be notified of its new regulatory requirements, which have immediate effect.

Of note, breaches of regulatory compliance need not result in a Category A licensee automatically being reclassified as Category B. The Commission is aware that service issues will arise from time to time. Having regard to the materiality or severity of the breach, and provided the breaches are not persistent or consistently repeated, it is the licensee's response – such as minimising the impact on customers and developing risk mitigation measures against the problem recurring – that is important from a competent operation perspective. From the perspective of the licensee, this means the ongoing verification process should not be a 'check-list' of processes and procedures, but should instead relate to the impact that the licensee's actions has had on its customers.

All Category B classifications will continue until the Commission is confident the licensee can demonstrate competent operation. This may involve the Commission auditing the licensee to seek evidence of competent operation as part of establishing a basis for trust in the licensee. The period of time taken to demonstrate competent operation may vary on a case-by-case basis and will largely be dependent on a licensee's practical response to any concerns raised. Once trust is gained (or regained), licensees are presumed to be engaging in a competent operation and performing appropriately and will be considered a Category A licensee – unless, subsequently, further evidence is presented to the contrary.

Questions for consultation

- ▶ Is the assessment process for categorising licensees appropriate? If not, why not, and how might it be improved?
- ▶ Should the Commission publish results of its assessments, as proposed by maintaining a list of licensees that do not demonstrate a competent operation to the Commission's satisfaction?

3.5 Changes to reporting obligations and the Commission's analytic approach

The Commission is proposing that reporting requirements for Category A licensees be reduced, relative to existing arrangements. For Category B licensees, the Commission is proposing that reporting requirements are at least equivalent to existing obligations – unless there is reason to extend these for a particular licensee.

Specifically, the Commission is proposing to limit a Category A licensee's annual reporting return,⁶⁹ approved by the CEO (or equivalent), to the following:

- ▶ a list of office holders to assure the Commission that the licensee is a fit and proper person
- ▶ connection and customer numbers, to be used primarily for calculating Commission licence fees (water) and EWOSA membership fees respectively⁷⁰
- ▶ identification of any material changes to operations, and
- ▶ a statement of assurance that the licensee is complying with its obligations and engaging in a competent operation to the level contemplated in Box 1.

Category A licensees will also be required to commit to providing relatively immediate ('real time') information regarding any material service issue arising, the response and the outcome. Those data, plus that received from the reduced annual reports, will augment the Commission's current database.

The reason the Commission considers it can adopt the above approach for Category A licensees is because it has collected a significant amount of information over the last seven years, in the case of most water and sewerage licensees and possibly longer for some energy licensees, under the existing regulatory framework.

This data is used by the Commission in its compliance framework, for its annual performance reporting process and to support assessments of customer complaints. But it also allows the Commission to develop the baseline information sets and time series analysis for each small-scale network that will support the capability to transition to the VTA model. This is because the baseline information relates to all aspects of competent operation, such as pricing and assets, as well as reliability and service indicators. This is particularly so for water and sewerage licensees, which make up the majority of small-scale licensees. Further, it should be possible to maintain the currency of this baseline information through the requirement that licensees advise the Commission of any material changes to operations and the use of the audit process as and when needed.

In addition to this updated baseline information, the Commission is also proposing to place greater emphasis on collecting data relating to licensees and their networks from sources other than licensees throughout each year. This is because the Commission's proposal to reduce reporting requirements means there will be less information reported directly to the Commission from Category A licensees annually, in a specific format and following a specific process.

The Commission refers to that data as market intelligence and it includes:

⁶⁹ Which in order to streamline the reporting process for Category A licensees might end up being incorporated as part of the Annual Compliance Report.

⁷⁰ A potential harmonisation task is to streamline the collection of information by regulators and related agencies from licensees, where a net benefit from doing so can be identified. An example could be to have a specific piece of information collected by one agency and on-provided to other agencies with a legitimate interest in the information.

- ▶ Complaint data: EWOSA will provide information regarding customer complaints to the Commission (see Chapter 5 for details regarding the role of EWOSA licensee membership). This data will alert the Commission to potential customer-related issues across licensees as they arise.
- ▶ Other sources: other sources of data relating to licensees will include communication with other regulators, direct customer contact, licensees' websites, the Commission's Consumer Advisory Committee, approaches from individual Consumer Advisory Committee members, members of Parliament, the media and any other sources that the Commission may identify in the future.

Collecting market intelligence provides the Commission with a more diverse source of immediate knowledge than it currently receives. If the market intelligence identifies concerns that warrants further assessment the Commission can request information from the relevant licensee, either as an ad hoc request or as a consequence of an audit. This will benefit customers if it results in a quicker resolution of issues.

In totality, this approach should result in the Commission having a more immediate, richer source of knowledge on which to base assessments in a timely manner, while at the same time reducing the regulatory impact of reporting for Category A licensees. Given this, the Commission does not consider that reduced routine reporting requirements by Category A licensees to the Commission will result in a greater incidence of non-compliance or performance issues.

Further, the credible threat of being reclassified as Category B exists if any Category A licensee chooses to interpret reduced reporting requirements as reduced compliance obligations. The Commission considers this particularly relevant, in order to provide customers and customer representative bodies with assurance of regulatory intervention if it becomes necessary.

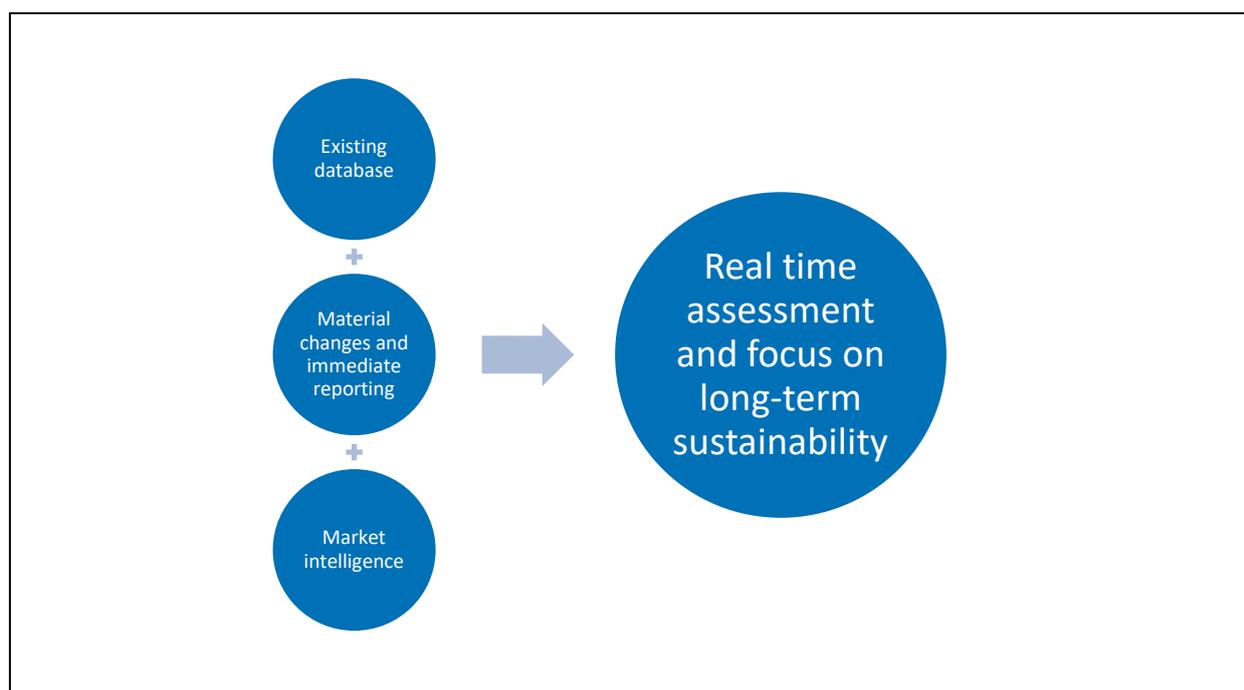
So overall, the Commission is proposing that, while the routine reporting requirements for Category A licensees reduce, all licensees will operate within a broader system of analysis that will, through time, build upon the baseline information sets and time series analysis developed for each licensee. This is stylised in Figure 5. The proposed regulatory framework has reduced reliance on single annual reporting to the Commission by licensees, with the Commission actively seeking out more 'real time' information, which will enable more 'real time' assessments to be undertaken.⁷¹

The objective is to transition the existing system from one that is, relatively speaking, dependent on annual (routine) reporting to assess compliance and performance, and has less emphasis on longer-term sustainability,⁷² to one that has a relatively stronger focus on a more immediate 'real time' assessment mechanism and the role of longer-term sustainability, in relation to the circumstances of each licensee. This revised approach will be supported by a combination of an annual reporting mechanism (noting the potential for some licensees to have more detailed reporting requirements if classified as Category B), audit results and market intelligence.

⁷¹ Note that annual reporting is only one component of the Commission's current compliance framework, which requires licensees to report material breaches of their obligations immediately. See Commission, *Water Industry Guideline No 1 – Compliance System and Reporting*, Version: WG1/04, July 2016, available at <https://www.escosa.sa.gov.au/ArticleDocuments/952/20160706-Water-GuidelineNo1-ComplianceSystemsReporting-WG1-04.pdf.aspx?Embed=Y>.

⁷² Any compliance or complaint issues identified or brought to the Commission's attention are investigated throughout the year.

Figure 5: Data analytics framework



3.5.1 Material changes to operations

The Commission is proposing to introduce an obligation for a Category A licensee to annually update the Commission on any material changes to its operations, alongside the annual assurance statement.⁷³ This will allow Category A licensees to report on an exception basis, rather than provide annual information that has not materially changed. As competent operations, Category A licensees should have the capability to determine if a change is material, in the context of their network and the services provided. If uncertain, a Category A licensee can communicate with the Commission regarding this and is at liberty to identify any change as material if it wishes.

The reason for this approach is that, if circumstances have not materially changed, the Commission can assume that previous information provided is a suitable proxy when updating its baseline information on the licensee (that is, use the previous year's data, or some form of average of historical data, when there has been no material change).

If a licensee reports a material change(s), the Commission will liaise with the licensee to understand the implications this may have for the baseline information held about the licensee. Material changes to operations will include anything that may impact consumers, such as pricing or the viability of the service. In determining if a change to operations is material, the Commission is of the view that licensees should be guided by the definition of 'material', which is: 'of substantial import or much consequence' and 'likely to influence the determination of a cause'.⁷⁴

Box 3: Examples of material changes

Licensee A provides a reticulated LPG service to two hundred customers and has expanded into a new housing development. This adds thirty new customers, as well as the necessary infrastructure.

⁷³ This is seen as a minimum requirement and the Commission would encourage ongoing dialogue between it and licensees, with licensees reporting material changes as they occur.

⁷⁴ Macquarie Dictionary (Online), accessed 8 Jan 2020, <https://www.macquariedictionary.com.au/>

Since this expansion is a significant change to operations, increasing the asset stock as well as customer numbers, the licensee determines it is a material change and informs the Commission in its annual reporting return.

Licensee B publishes a new asset management plan for its sewerage operations, and subsequently increases prices by six percent. Since this is a significant price increase above inflation, the licensee determines it is a material change and informs the Commission through its annual reporting return.

In the following year, Licensee B replaces 13 percent of its pipes. Although this should reduce the number of service issues it records, the licensee determines the upgrade is a material change to its asset base and informs the Commission through its annual reporting return.

The Commission does not propose to further define materiality thresholds, either quantitatively or qualitatively. The diversity of licensees and their networks means materiality thresholds are unlikely to be meaningful because they will struggle to match all operational contexts.

The Commission is not proposing to mandate the form in which the information is provided and this reporting requirement should be able to be met using existing business systems and processes required to properly manage a licensee's business. The audit process (discussed below) will present opportunities to test the robustness of this approach, from the perspective of both licensees and the Commission.

Some examples of material changes are provided in Box 3. If needed, further guidance on what constitutes materiality can be developed in consultation with stakeholders following the Inquiry.

3.5.2 Immediate reporting of service issues

The Commission acknowledges that operational issues occur from time to time, and that this does not necessarily indicate whether a licensee is, or is not, engaging in a competent operation. Rather, it is the licensee's response and subsequent actions that will determine competent operation. Given this, the Commission is proposing that Category A licensees will be required to provide relatively immediate 'real time' information regarding any material service issues (for example, unplanned interruptions), their subsequent response to resolving those issues and the outcome.

This encourages the rectification of issues in a timely and efficient way. It also assists the Commission to identify, over time and across licensees, any systemic issues early, through identifying trends and patterns. It also assists in developing constructive relationships between the Commission and licensees, as well as deepening the Commission's knowledge of the operations of individual networks.

Furthermore, for similar reasons to the approach for material changes to operations, the Commission does not propose to define materiality thresholds in the context of service issues. If uncertain, a licensee can communicate with the Commission regarding this and is at liberty to identify any service issue as material if it wishes. However, the Commission will monitor this approach and will respond if it results in material service issues going unreported in relatively immediate 'real time'.

3.5.3 Statement of assurance

The Commission is proposing that Category A licensees provide an assurance statement, as part of their annual reporting return, that they are undertaking a competent operation and have notified the Commission of all material changes. This statement provides an assurance that regulatory requirements (described in Box 1) are being met, and that the licensee will be able to provide supporting evidence and information if and as requested by the Commission.

Such an assurance statement would be an extension of the current compliance assurance statement, providing overall assurance on not just regulatory compliance in a narrow sense but also on the

licensee's long-term asset, financing and delivery capabilities – which are inherent and fundamental obligations within the licence.

Overall, the Commission considers this statement particularly relevant, as it provides assurance to customers and customer representative bodies of the intention of the licensee to provide a competent operation.

Further, the assurance statement serves as a risk mitigation mechanism against reduced reporting requirements being interpreted by a licensee as not needing to maintain appropriate records to underpin business operations.

Under the VTA model, a Category A licensee can maintain its business records in a manner it wishes, but must be capable of providing relevant information when requested by the Commission (for example, in response to an audit). If it cannot, the Commission may determine that the licensee's assurance no longer holds, or that it is not complying with its obligations. Depending on circumstances, this may warrant the Commission moving the licensee into Category B (as explained earlier in this chapter).

3.5.4 Audits

Audits are an important component of the Commission's compliance framework and take various forms, as outlined in Table 5.

Table 5: Types of audit and their function

Audit	Function
Periodic audits	The Commission will advise each year the focus areas for audits (using a risk-based assessment), although it may not make prior announcements as to which licensees will be audited or when.
Incident-based audits	Audits to establish facts, circumstances etc., should a material issue come to light. This might be directed at a single licensee or group of licensees, depending on the nature of the incident.
Ad hoc audits	These are designed to continually verify the level of licensee performance. Again, the Commission may not make prior announcements as to which licensees or when.
Assurance audits	These are designed to check that remediation actions (for example, from a non-compliance and/or loss of trust) are in place and effective. This might be directed at a single licensee or group of licensees, depending on the nature of the incident. The Commission may not make prior announcements as to the timing of these audits.

As part of its ongoing verification process under the VTA model, the Commission will conduct audits of all licensees over time. Auditing will seek to verify competent operation and fill any information gap identified. It will allow the Commission to examine whether the licensee is meeting the requirements of the Acts, licences, codes, and guidelines, and if not, why not and the remedies proposed by the licensee. Audits will also inform the Commission as to whether the licensee:

- ▶ appropriately engages with its customers, given its operational context
- ▶ is pricing appropriately, and
- ▶ can demonstrate having a sustainable operation, including an understanding of its assets and the costs to provide a sustainable service over the long term, and the practical actions implemented that are based on those factors.

The audits will be undertaken by the Commission, or parties working for the Commission. The Commission will seek efficiencies by combining elements of the audit, for example, if responding to a specific concern Commission staff can use the opportunity to understand broader compliance issues. The Commission will also seek to leverage audits carried out by other regulators or conduct combined audits where possible.

The Commission will publish the results of audits, potentially as part of the Commission's annual performance reporting on small-scale networks. This is considered important in order to assure customers and consumer representative bodies that the Commission is fulfilling its legal obligations to ensure licensees are meeting their regulatory obligations and providing a competent operation. This is consistent with the Commission's primary statutory objective.

3.5.4 Annual performance reports

The proposed changes to the annual reporting requirements of licensees enables a change in how licensee performance is reported to customers and other stakeholders. Currently, the Commission publishes an annual performance report which provides an overview of the performance of licensees at an aggregated level.

The information currently reported is at a high level and may not provide sufficient detail for specific licensees' customers to understand local performance. For that reason, and to drive performance accountability and transparency by licensees, the Commission's position is that licensees should themselves publish up-to-date and accurate performance information, with the Commission focussing on systemic or audit/compliance matters. Under that proposal, the Commission would have a role in ensuring that licensees' systems, processes and controls for publication of performance data are robust, such that customers can rely on the information provided.

The proposed changes are:

- Licensees will be required to report on their performance directly to their customers, with form and detail being determined through customers' engagement. This provides a direct line of accountability from licensees to their customers.
- The Commission will continue to publish annual performance reports, but those will relate more to matters such as systematic issues or observations, the outcomes of audits and major compliance or operational issues and explaining what the Commission has done to assess performance and competence throughout the year.

This approach ensures that the costs associated with reporting are directed at providing customer benefit and licensee accountability (noting that the system as a whole allows for a more prescriptive regulatory reporting regime to be implemented depending upon an individual licensee's behaviour).

Questions for consultation

- ▶ Are the reduced reporting requirements for Category A licensees appropriate? If not, what should reporting requirements look like?
- ▶ Are guidelines on materiality required? If so, what might they cover and why?
- ▶ Are the proposed checks and balances – assurance statement, audits and compliance – appropriate?
- ▶ What information should be reported in annual performance reports? For each piece of information, who should report this information, the Commission or licensees, and why?

3.6 Measuring success

It is important to establish measures of success for the VTA model and to monitor actual performance against these measures. This supports both future reviews of the effectiveness of the VTA model, as well as allowing it to evolve as experience with its implementation increases. These measures would be consistent with the Commission's business model (see section 2.2) and might include the following features.⁷⁵

Licensees demonstrating competent operation, on a continuous basis, through business practices that:

- ▶ are customer-focussed and involve consistent and genuine engagement and consultation with customers to deliver the price-service-quality mix valued by customers at the lowest sustainable cost
- ▶ develop, maintain and implement sound and robust long-term financing, asset management and operational plans that underpin the delivery of services in a sustained manner
- ▶ price services in a manner that takes account of efficient costs on a sustainable basis, customer willingness to pay, minimum legislative standards and affordability, noting that there may be trade-offs within these that need to be effectively and transparently managed
- ▶ appropriately account for legislative requirements (not just those arising under the Commission's regulatory framework), and
- ▶ provide, or will provide for, sufficient financial strength to ensure the long-term viability of the service.

The Commission administering the VTA model in a manner that:

- ▶ results in most, if not all, licensees classified as competent operation, demonstrated through measures such as:
 - no issues identified through ad hoc audits, indicating that licensees are accepting that competent operation must be achieved on a continuous basis, and
 - limited need for follow up on any licensee reporting, indicating that licensees understand their obligations
- ▶ uses evidence and analysis to demonstrate the sustainability, or otherwise, of the network assets, and
- ▶ uses its verification, compliance and enforcement powers where evidence shows licensees have failed to meet regulatory requirements (or are at risk of doing so) and are not being accountable to their customers, thereby implementing a strong, targeted and risk-based compliance framework.

Overall, as with any regulatory framework, it may take a number of years before the outcomes of the VTA model are fully realised, but it should be possible to identify trends through time. In particular, in the initial years the Commission will gain a greater understanding of the extent to which current licensees are achieving sustainable operations, continuing to meet their obligations and behaving appropriately towards their customers under the VTA model.

⁷⁵ Commission, *Strategy 2020-2023*, May 2020, pp.8-11 and pp.14-15, available at <https://www.escosa.sa.gov.au/about-us/strategic-plans>.

4 Proposed approach to harmonisation

Summary

In parallel with the implementation of the VTA model, the Commission has considered the harmonisation/standardisation of current code and licence obligations across the small-scale industries – the harmonisation project.

For reasons of history and underpinning legislative frameworks, there are various differences between the regulatory arrangements for the water, gas and electricity industries. The Commission has identified the potential for those differences to be inefficient for licensees (particularly where a single licensee provides services across those industries) and for consumers, to the extent that they might expect common issues across industries to be dealt with in a common manner, which may not always be the case at present. At the same time, the Commission recognises that changes to existing business systems and practices will have costs, which is an important consideration in the context of potential harmonisation.

Given that the proposal to adopt the VTA model would represent a significant change in regulatory approach, and to ensure maintenance of existing consumer protections, the Commission's proposal is that it will continue to pursue harmonisation as a separate and parallel project.

This chapter discusses issues relating to harmonisation of the currently differing regulatory regimes for small-scale water, sewerage, electricity and gas networks.

4.1 Harmonisation in the context of the Inquiry

For reasons of history and underpinning legislative frameworks, there are various differences between the regulatory arrangements for water, gas and electricity. Harmonisation relates to assessing the merits of changing existing regulatory arrangements through consultation with stakeholders, based on assessing the available evidence. The objective is to ensure that the content of regulatory instruments remains appropriate and relevant, to clarify points where necessary and to reduce duplication. It also includes adding consistency as follows:

- ▶ between industries – such as consistency in the consumer protections provided in each industry (for example, adopting the same approach to customer enquiries, complaints and the resolution of disputes across all small-scale networks), and
- ▶ within industries – such as consistency across licences within an industry (for example, ensuring off-grid electricity licences contain the same core customer obligations, in both form and wording, where practicable).

While there are potential benefits of harmonisation, the extent to which it would result in a net benefit for the community needs to be clearly identified prior to implementation. In particular, harmonisation should only materially change the substance of the customer protections that already exist if there is a demonstrable clear net benefit in doing so.

4.2 Separating harmonisation and the implementation of the VTA model

As the Commission is proposing to adopt the VTA model, the next questions are how do the VTA model and harmonisation interrelate and should harmonisation be adopted?

The Commission is of the view that implementation of the VTA model and harmonisation aspects of the small-scale network Inquiry can be separated into two differing projects within the overarching Inquiry – one being the implementation of the VTA model and the other harmonisation. This is because

while the VTA model provides for a differing approach to reporting, it does not alter licensees' obligations built into existing regulatory instruments.

Further, separating them may be advantageous, through mitigating the risk of there being any timing discontinuity between the ability to implement the VTA model and the outcome of any harmonisation project undertaken.

4.3 Stakeholder feedback regarding harmonisation

In terms of harmonisation, while there was support from the stakeholders who explicitly addressed it, there were also concerns. Stakeholder feedback is summarised in Table 6.

Table 6: Stakeholder feedback regarding harmonisation

Organisation	Stakeholder comments
South Australian Council of Social Service (SACOSS)	SACOSS submitted support for harmonisation across licences or through the implementation of an industry code, supporting Framework and Approach paper Option 2 (retain the present reporting-compliance regulatory approach, but harmonise between and within industries ⁷⁶). It was not able to support option 4 (lighter-handed approach and harmonise between and within industries), in part because it considered there is a need to build trust with the small-scale networks industry. SACOSS also urged the Commission to consider the risks of trusting newer entrants into the market with a changing energy landscape.
Origin	<p>While supporting harmonisation, Origin submitted that the following factors are important to achieving a good outcome:</p> <ul style="list-style-type: none"> ▶ a material net benefit to the community needs to be clear ▶ should be fit for purpose ▶ should be mindful of the impact on individual service providers and aim to provide a net benefit to individual providers, and ▶ not lead to higher obligations in an industry that cannot be justified by the circumstances of that industry. <p>Origin submitted concern that harmonisation could lead to more regulation for reticulated LPG networks, noting that it considers regulatory costs are already high and that the Commission's own assessment indicates there are no current service issues.</p>
City of Tea Tree Gully	The City of Tea Tree Gully submitted that imposing the same requirements on regional and metropolitan licensees may not be in the best interest of (metropolitan) customers and community, when environment factors, community needs and expectations are likely to differ between regional and metropolitan areas.
Adelaide Hills Council	Adelaide Hills Council submitted concern that the process of harmonising the regulatory instruments across industries may result in an increase in regulatory requirements for one or more industries to bring them in line with the others. Further, the same may apply to harmonisation within industries.

⁷⁶ Essential Services Commission, Framework and Approach Paper, June 2019, p.20.

Regarding the comments of Origin, the City of Tea Tree Gully and Adelaide Hills Council, the Commission agrees that harmonisation should be fit for purpose and should seek an outcome that maximises net community benefit, rather than it being an end in itself. The Commission also acknowledges there is the possibility that the outcome of harmonisation may be there are no specific changes identified that provide a tangible net benefit at this time, but recognises this can only be known through undertaking the project.

Regarding SACOSS's comments, the Commission acknowledges that, as the Framework and Approach paper focused on strategic direction, it did not fully describe how the VTA model might operate in practice. In this context and as noted previously, while the VTA model proposed provides for a differing approach to reporting for trusted licensees (Category A), it does not alter a licensee's actual obligations built into the existing regulatory instruments. Given this, it does not change existing consumer protections, only the reporting process.

However, harmonisation may change consumer protections. The current consumer obligations serve as a minimum or a benchmark, with Category A and B licensees expected to deliver at least this minimum, while looking to exceed this if supported by customers' stated requirements.

4.4 Proposed approach to harmonisation

Subject to stakeholder feedback on this Draft Inquiry Report, the Commission is proposing to further consider harmonisation as a separate part of the Inquiry – not dependent on implementation of the VTA model. This ensures the regulatory arrangements administered by the Commission remain efficient and appropriate. The project will assess the extent to which the regulatory instruments, and the associated obligations within these, can, and should be, harmonised for licensees, both within and across the water, sewerage, electricity and gas sectors.

This will include a dedicated consultation process with stakeholders, seeking to gain stakeholder views on, for example, the following:

- ▶ What key current regulatory obligations warrant consideration for harmonisation and why?
- ▶ What specific change(s) should be considered and why?
- ▶ What are the benefits and costs to customers/licensees from adopting the proposed change(s)?

Any changes to the regulatory instruments and associated obligations will only be implemented if the Commission considers the benefits outweigh the costs, based on the evidence available to it.

Overall, this approach ensures both the implementation of the VTA model and harmonisation aspects of the Inquiry are given an appropriate level of scrutiny and that any concerns surrounding each aspect are separated.

The Commission is seeking to finalise any harmonisation within the timeframe proposed for the implementation of the VTA model. That is by July 2021, noting that if harmonisation requires more consideration this does not impact the implementation of the VTA model.

Questions for consultation

- ▶ Should the Commission undertake harmonisation? If not, why not?
- ▶ If harmonisation is undertaken, how important is it that the timing for the implementation of any outcomes from harmonisation align with the implementation of the VTA model?

5 The role of EWOSA

Summary

All licensees are currently required to have effective customer dispute resolution processes in place, including escalation to an independent dispute resolution body where a customer's complaint is not able to be resolved by the licensee. Under the *Water Industry Act 2012*, the Commission may require a licensee to utilise an independent dispute resolution body specified by the Commission.

For all national electricity market and natural gas providers, as well as for SA Water and some (but not all) small-scale water and sewerage service providers, the Commission has specified the Energy and Water Ombudsman SA (**EWOSA**) as the independent dispute resolution body. Where that is not the case, the Commission has permitted some licensees to use other entities, with the understanding that it would monitor customer outcomes over time. The Commission has since observed that licensees have adopted various approaches to dispute resolution and independent dispute resolution, with differing capacities to enforce remedies and differing outcomes for customers.

The Commission is proposing that all small-scale network providers will become members of EWOSA, for the following reasons:

- ▶ EWOSA is a recognised expert in customer complaint and dispute resolution, having provided that service for over 20 years in regulated essential services markets.
- ▶ Customers benefit from EWOSA's consistent, impartial dispute resolution process for customers, with the ability to impose remedies.
- ▶ Licensees benefit from EWOSA's cost-effective achievement of outcomes that reasonably reflect the interests of all parties, given the nature of the dispute and the behaviour of the participants to the dispute.
- ▶ The Commission benefits as, through reporting processes, EWOSA provides the Commission with complaint, dispute and systemic issues data that may be used to identify areas of regulatory concern or potential issues with the manner in which a licensee is conducting its operations. This will be critical information for the VTA model and, in its absence, the ability of the Commission to limit licensees' regulatory reporting obligations.

The Commission acknowledges that the EWOSA scheme has a cost for licensees but, having analysed that cost structure, is of the view that, for the above reasons, the benefits of mandatory membership outweigh those costs.

This chapter explains why the Commission is proposing that each licensee become a member of EWOSA.

5.1 Functions and scope of EWOSA

EWOSA is a dispute resolution service for participating retailers and distributors supplying electricity, gas, water and sewerage, and their customers.⁷⁷ EWOSA provides its services directly to customers free of charge, but member licensees are required to pay a joining fee, an annual fee and specific charges for each complaint handled by EWOSA.

⁷⁷ For more information, see EWOSA's website at <https://ewosa.com.au/>

EWOSA has a charter setting out its functions, jurisdiction and powers.⁷⁸ In general, its functions are to receive, investigate and facilitate the resolution of complaints by customers regarding:⁷⁹

- ▶ billing concerns
- ▶ payment arrangements and difficulty in paying
- ▶ debt collection and credit default listings
- ▶ disconnection or restriction of supply
- ▶ transferring from one energy supplier to another
- ▶ connection and supply of energy or water services
- ▶ the behaviour of licensee staff, including their marketing and customer service departments
- ▶ meters, poles, wires and pipes
- ▶ energy and water supplier actions that may affect land or other property, and
- ▶ privacy matters.

Excluded functions include complaints relating to the setting of prices, complaints previously considered by a Court, tribunal or arbitrator and customer contributions to the cost of capital works.⁸⁰

Prior to contacting EWOSA with a dispute, customers should first contact their licensee directly and attempt to resolve the dispute. Where matters are referred to EWOSA, potential assessment stages for complaints and action to address complaints are (noting that the majority of matters are dealt with in the early stages):⁸¹

- ▶ Enquiry
- ▶ Refer to Customer Service
- ▶ Consultation
- ▶ Refer to Higher Level
- ▶ Conciliation
- ▶ Investigation
- ▶ Review
- ▶ Determination, and
- ▶ Explanation of Resolution.

⁷⁸ EWOSA, *Charter of the Energy and Water Ombudsman (SA) Limited*, October 2018, available at https://ewosa.com.au/assets/volumes/general-downloads/EWOSA_CorporateDocument_Charter-2018.pdf

⁷⁹ EWOSA dispute handling process, available at <https://ewosa.com.au/resolving-complaints/our-process>. Also see EWOSA charter, clause 4.

⁸⁰ See EWOSA charter, clause 5.

⁸¹ See EWOSA *Our process*, available at <https://ewosa.com.au/resolving-complaints/our-process>. (website viewed 16 April 2020).

Where EWOSA makes a determination, the licensee is bound to comply with the terms or requirements of the determination. However, if a customer is unhappy with the terms of the determination they may withdraw from the process and will not be bound by the determination.⁸²

The Commission is able to require licensees to join EWOSA as a condition of licence.⁸³

5.2 EWOSA fees

There are three EWOSA member fees:

- ▶ joining fees
- ▶ fixed annual fees, and
- ▶ case handling fees.

The joining fee is charged when a member joins EWOSA. It covers the first year of membership and involves a level of induction and support. This means a new member is not charged a joining and annual fee in the first year of membership. Both the joining fee and fixed annual fee are based on the member's customer numbers. Case handling fees are charged per case and are dependant on the level of escalation, with EWOSA fees for 2020-21 provided in Appendix 2.

5.2.1 The impact of EWOSA membership fees on customer bills

The EWOSA Board has recently revised the joining and annual fee schedule to accommodate licensees with small customer numbers (see Table 10, Appendix 2). The potential customer bill impact of the fee depends on the EWOSA customer fee band and the degree to which a licensee passes through the fees to customers, with the impact of a full pass-through ranging from:

- ▶ Customers in the up to ten customer band face the largest potential impact, that is EWOSA annual membership fee might lead to a bill increase of between \$8.33 and \$50.00 (an average of \$13.16) per customer,⁸⁴ and
- ▶ Customers in the 5,001 to 20,000 customer band⁸⁵ face the least potential impact, that is the EWOSA annual membership fee might lead to a bill increase of between \$0.08 and \$0.15 (an average of \$0.11) per customer.

⁸² However, if the customer does not accept the determination, the licensee is released from the terms of the determination and the customer is free to pursue remedies in another forum including legal proceedings. EWOSA can play no further role in the case once a Determination is made. See EWOSA, Determination, available at <https://ewosa.com.au/resolving-complaints/our-process> (website viewed 21 April 2020).

⁸³ For electricity licensees refer to sections 6A(2) and 23(1)(k) of the *Electricity Act 1996*. For gas licensees refer to sections 6A(2) and 26(1)(d) of the *Gas Act 1997*. For water industry licensees refer to sections 7(2) and 25(1)(h) of the *Water Act 2012*. EWOSA will determine which licensees it accepts as members. However, in the case of EWOSA not being prepared to grant membership, then that the licensee would be in breach of licence and be required to do what is necessary in order to gain EWOSA membership.

⁸⁴ This comprises water customers only, with the total number of customers in this band being 19. Were the one network with a single customer excluded, the range would be \$8.33 to \$16.67.

⁸⁵ The current largest licensee (District Council of Mount Barker) reported customer numbers of 12,377 for 2018-19.

5.2.2 The impact of EWOSA case handling fees on customer bills

Case handling fees are directly dependent upon whether a dispute is referred to EWOSA and the extent to which any dispute escalates through EWOSA's complaint handling process. As Table 11 (Appendix 2) shows, case handling fees can escalate from a 'Refer to Customer Service' (\$40 per case) through to a 'Determination' (\$5,000 plus \$3 per minute). EWOSA charges the case handling fees to the licensee.

The Commission's expectation is that all licensees would seek to minimise the likelihood of incurring any case handling fees through resolving disputes prior to needing EWOSA's involvement. However, if a licensee has a need to use EWOSA's services, the expectation is that it would seek to minimise such costs and not unnecessarily escalate a dispute.

The Commission will monitor and liaise with EWOSA and a licensee regarding that licensee's particular usage of EWOSA's services and any associated accumulation of case handling fees. If, through this process, there is evidence to suggest that a licensee may be unnecessarily accumulating case handling fees and passing these onto its customers, the Commission would, in the absence of an appropriate response from the licensee, consider what remedial action to take from a regulatory perspective.⁸⁶

5.3 Stakeholder comments on EWOSA membership

There was both support for and arguments against mandatory EWOSA membership for licensees.

Alexandrina Council, the City of Tea Tree Gully, DEM, SACOSS and the Tea Tree Gully CWMS Residents' Action Group supported mandatory membership; Origin and the Adelaide Hills Council did not.

Adelaide Hills Council stated it did not see the benefit of joining because councils already have several complaint-handling mechanisms in place. It also submitted that it was not clear on what legislative powers EWOSA has to enforce a decision. Origin stated that membership should not be mandated, but rather at the discretion of the Commission.

In relation to the Adelaide Hills Council's submission, the Commission does not consider that having several complaint handling provisions available is necessarily ideal from a customer perspective. This is because there is potential for inconsistency of approach to the same complaint, and, depending on the dispute body chosen, there is no assurance of an enforceable outcome. In relation to EWOSA's powers, those are outlined in section 5.1 above.

In relation to Origin's submission, the Commission must make a licence be subject to the condition that the licensee participate in an ombudsman scheme determined or approved by the Commission. The discretionary question is the identity of the scheme.

5.4 Reasons for mandatory EWOSA membership

The Inquiry's Terms of Reference state that the Commission will analyse consumer protections associated with the delivery of services, with the objective of ensuring that any regulatory arrangements it administers are targeted, efficient and appropriate. Access to dispute resolution processes is a critical aspect of this, as it provides an avenue for consumers to practically exercise their rights if needed. It is the Commission's view that there is overall benefit in mandating EWOSA membership which outweighs the costs, as summarised in Table 7.

⁸⁶ Such options could include a price determination to prevent costs being passed through, or reassessment to Category B to address any underlying problem causing the complaints.

Table 7: Costs and benefits of EWOSA membership

Party	Costs and benefits
Customers	<p>Costs</p> <ul style="list-style-type: none"> ▶ EWOSA-related costs if passed through to customers. <p>Benefits</p> <ul style="list-style-type: none"> ▶ Provides consistency in complaint and dispute resolution across all customers. ▶ Can enforce a resolution. ▶ Customers may gain greater assurance of procedural fairness because of the above points. ▶ Licensees have an incentive to deal effectively with any issues prior to getting to the point of an investigation or audit, given the possibility for regulatory action if they behave contrary to this expectation.
Licensees	<p>Costs</p> <ul style="list-style-type: none"> ▶ EWOSA-related fees. <p>Benefits</p> <ul style="list-style-type: none"> ▶ Incentives to resolve complaints prior to getting to the point of an investigation or audit, given the possibility for regulatory action if licensees behave contrary to this expectation. ▶ Dealing with an experienced and expert body in the industry sectors relevant to small scale networks, which has an understanding of what licensees should be able to provide. ▶ Provides a support function for licensees on how they best meet customer expectations, given this expertise, experience and specialisation.
The Commission	<p>Costs</p> <ul style="list-style-type: none"> ▶ No change in cost. <p>Benefits</p> <ul style="list-style-type: none"> ▶ The Commission will receive consistent and reliable customer complaint information for monitoring and analysis.

Questions for consultation

- ▶ Do you support the proposed role of EWOSA as outlined in this chapter?
- ▶ If so, please provide the reasons for this view.
- ▶ If not, why not? What approach would you prefer and why would that provide a better outcome?

6 How the proposed framework meets the outcome sought from the Inquiry

The outcome sought from this Inquiry is to identify a regulatory framework covering the relevant services, which meets the terms of reference by:

- ▶ providing for a price-service-quality offering that meets the specific needs of customers of small-scale networks, subject to legislative requirements
- ▶ ensuring incentives and accountability are with the right people
- ▶ minimising the regulatory cost by ensuring regulation is effective, targeted, fit-for-purpose and capable of responding to external influences, and
- ▶ creating consistency across regulatory instruments where applicable.

The Commission is of the view that implementing the VTA model, coupled with an enhanced role for EWOSA, meets that outcome, while maintaining consumer protections, as summarised in Table 8.

Table 8: How the proposed framework meets the outcome sought from the Inquiry

Outcome component	Reason
Providing for a price-service-quality offering that meets the specific needs of customers of small-scale networks, subject to legislative requirements.	This requires effective and ongoing communication between licensees and customers, which is a core aspect of competent operation and an integral aspect of implementing the VTA model.
Ensuring incentives and accountability are with the right people.	The VTA model aligns both compliance and performance risks more directly with a licensee's behaviour. The licensee is accountable for its actions and bears the risks associated with its behaviour through the Commission assigning licensees to Category A or B when applying the VTA model.
Minimising the regulatory cost by ensuring regulation is effective, targeted, fit-for-purpose and capable of responding to external influences.	<p>The VTA model provides for a reduction in annual reporting requirements for Category A licensees and seeks to reduce regulatory oversight and any associated costs.</p> <p>The VTA model is also flexible, fit-for-purpose and targeted because it allows the Commission to increase or decrease certain aspects of regulation as needed, based upon the behaviour and actions of the specific licensee.</p> <p>As external influences change, the Commission can assess any licensee's response to this and the extent to which this meets the requirements for Category A classification. This applies equally to changing technological, operational, environmental or other factors which have an impact on the delivery of water and sewerage retail services, and the sale and/or supply of electricity and LPG services to South Australians via small-scale networks.</p> <p>While mandating EWOSA membership results in additional membership fees, the Commission considers this is outweighed by the benefits of this proposal.</p>
Creating consistency across regulatory instruments where applicable.	<p>Membership of EWOSA for all licensees will provide a consistent complaint and dispute resolution process for all customers.</p> <p>The objective of the harmonisation project is to identify, and consult on, opportunities to harmonise the regulatory instruments.</p>

7 Next steps

In addition to meeting with stakeholders, the Commission invites written submissions from stakeholders and members of the public on this Draft Inquiry Report. Written comments should be provided by Friday, 2 October 2020.

7.1 Timetable for this Inquiry

Key dates for this consultation are shown in Table 9 below.

Table 9: Key dates for consultation

Key date	Process
August to October 2020	Consultation with all stakeholders on this Draft Inquiry Report.
2 October 2020	Submissions due on this Draft Inquiry Report.
February 2021	Release of the Final Report.
February to April 2021	Consultation on the detailed implementation of the VTA model. Consultation on harmonisation of codes and licences – should stakeholders identify a need in responding to this report. Otherwise this issue is to be kept under consideration by the Commission as a part of its ongoing regulatory review and continuous improvement cycle.
July 2021	Date of application of any changes to the regulatory framework.

Appendix 1 – Terms of Reference

Notice of an Inquiry into regulatory arrangements for small-scale water, sewerage and energy services

Pursuant to Part 7 of the Essential Services Commission Act 2002

1. BACKGROUND

- 1.1. Pursuant to section 34 of the Essential Services Commission Act 2002 (**Act**), the Essential Services Commission (**Commission**) may, following consultation with the Treasurer, conduct an Inquiry if it considers an Inquiry is necessary or desirable for the purpose of carrying out its functions.
- 1.2. The Commission has statutory licensing and related regulatory powers and functions in relation to the water, sewerage, electricity and gas industries in South Australia.
- 1.3. The Commission is aware of recent and emerging technological, operational, environmental and other, similar, developments which will have impacts on each of the water, sewerage, electricity and gas industries and, as a result, for South Australians and the State economy generally.
- 1.4. Further, in relation to the water and sewerage industries, the current regulatory determination which applies to small-scale water and sewerage retailers serving 50,000 connections or less is due to expire on 30 June 2017.
- 1.5. In order to meet its primary statutory objective of protecting South Australian consumers' long-term interests with respect to the price, quality and reliability of essential services, it is appropriate for the Commission to consider the above matters in the context of its regulatory powers and functions.
- 1.6. Having regard to these matters, the Commission has formed the view that an Inquiry into the way in which it regulates small-scale utility operations is necessary and desirable at this time to ensure that the regulatory frameworks it applies under industry regulation Acts is consistent with its primary statutory objective, and is proportionate and responsive to recent and emerging issues.

2. TERMS OF REFERENCE

- 2.1. Following consultation with the Treasurer, the following are the Terms of Reference for the Inquiry:
 - 2.1.1. The Commission will inquire into appropriate regulatory arrangements administered by the Commission under the Act (including subsidiary regulatory instruments made by the Commission such as industry codes) and price regulation arrangements for small-scale operations for the purposes of carrying out its functions in the following markets:
 - 2.1.1.1. water retail services
 - 2.1.1.2. sewerage retail services
 - 2.1.1.3. the sale and/or supply of electricity outside of the national electricity market, and
 - 2.1.1.4. the sale and/or supply of reticulated liquid petroleum gas.
 - 2.1.2. In undertaking the Inquiry, the Commission will:
 - 2.1.2.1. Analyse consumer protection issues associated with the delivery of small-scale water, sewerage and energy services, with a view to ensuring that any regulatory arrangements it administers are targeted, efficient and appropriate.
 - 2.1.2.2. Identify an appropriate regulatory framework that:

- 2.1.2.2.1. has relevance for customers and for licensees and exempted entities currently providing small-scale water, sewerage and energy services, and
- 2.1.2.2.2. will be relevant in the context of new participants, business models and/or technologies which could deliver more effective and innovative outcomes for customers in the future.

2.1.2.3. Have regard to other relevant contextual matters.

2.1.3. The Commission may address such other matters as it thinks fit, consistent with the powers provided to the Commission by the relevant industry regulation Acts, for the licensing, pricing, quality and reliability of services associated with the delivery of small-scale water, sewerage and energy services.

3. REQUIREMENTS FOR THE INQUIRY

3.1. Consultation with stakeholders will be undertaken in accordance with the Commission's Charter of Consultation and Regulatory Practice. This will include a:

3.1.1. call for submissions to an Issues Paper in August 2016, and

3.1.2. call for further submissions to a Draft Report in January 2017.

3.2. The Commission will complete this Inquiry by publishing a Final Report by the end of June 2017.

3.3. In accordance with section 38 of the Act, the Final Report will also be:

3.3.1. provided to the Treasurer, and

3.3.2. laid before both Houses of Parliament, within 12 sitting days of receipt by the Treasurer.

Brett Rowse

Chairperson

Appendix 2 – 2020-21 EWOSA fees

Table 10: EWOSA joining and annual fees based on customer numbers 2020-21^{87 88}

Number of customers	Joining fee (ex GST)	Fixed annual fee (ex GST)	Number of licensees ⁸⁹	\$ increase per customer (average) Annual fee only ⁹⁰
Up to 10	\$50	\$50	10	\$8.33 to \$50 (\$13.16) ⁹¹
11 to 20	\$100	\$100	2	\$5.56 to \$5.88 (\$5.71)
21 to 500	\$200	\$200	27	\$0.41 to \$9.52 (\$0.94)
501 to 5,000	\$500	\$500	40	\$0.11 to \$0.80 (\$0.25)
5,001 to 20,000 ⁹²	\$4,000	\$1,000	4	\$0.08 to \$0.15 (\$0.11)

Table 11: EWOSA case handling fees 2020-21

Case level	Fee (ex GST) ⁹³
Enquiries	\$40 per case
Refer to Customer Service (RCS)	\$40 per case
Refer to Higher Level (RHL)	\$125 per case
Explanation of Resolution	\$120 per case
Consultation	\$140 per case
Conciliation	\$250 plus \$1.00 per minute
Level 1 Investigation	\$950 plus \$1.30 per minute
Level 2 Investigation	\$1,050 plus \$1.90 per minute
Level 3 Investigation	\$1,150 plus \$2.20 per minute
Determination	\$5,000 plus \$3.00 per minute
No Contact Charge	\$100 per instance

⁸⁷ Where the member has no recorded complaints during the 12 months prior to setting the budget no 'fixed fee based on time on system' is charged.

⁸⁸ Ranges are calculated by dividing the annual fee by the number of customers in the licensee with the most customers for that category (column 1) and the licensee with the least customers. The average is the total of annual fees for that category divided by the total number of customers in the category.

⁸⁹ Number of licensees based on 2018-19 annual reports.

⁹⁰ Using 2018-19 licensee numbers.

⁹¹ The low number of customers in this category results in bill impacts which are relatively high compared to licensees with more customers.

⁹² There are no licensees with more than this number of customers.

⁹³ Minutes are as recorded in the complaint management system. Cases involving multiple addresses/meters relating to a single core issue will be charged as a single case plus the minutes spent on the case.



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