

SA Water Regulatory Determination 2020

Negotiation Forum – Charter and Governance

1 Background to the SA Water Regulatory Determination 2020 process and objectives

The Commission's primary objective is to protect the long-term interests of consumers with respect to the price, quality and reliability of essential services, which includes the water and sewerage services provided by SA Water Corporation (**SA Water**).

The next stage in the Commission's ongoing economic regulatory process for SA Water will be the making of a new regulatory determination to apply to SA Water from 1 July 2020 to 30 June 2024 (**SAW RD20**). This next determination will challenge SA Water to:

- ▶ provide water and sewerage services at the lowest sustainable price for the quality and reliability levels valued by customers, and
- ▶ have in place sound long-term asset management, operating and financing strategies, which support the provision of those services for customers of today and tomorrow.

Those intended outcomes are consistent with the Commission's primary objective.

SA Water provides three broad classes of regulated retail services:

- ▶ drinking water retail services
- ▶ sewerage retail services, and
- ▶ 'excluded' retail services, which comprise the sale of recycled water, connection services, trade waste services and other miscellaneous retail services.

Since 2013, the Commission has made regulatory determinations for those regulated services.

The regulatory determinations for the drinking water and sewerage retail services involved:

- ▶ setting the maximum revenues that SA Water could recover from its customers for those services
- ▶ making a consumer protection code to deal with matters such as billing requirements, flexible payment arrangements, limitations on disconnections of customers for non-payment and other contractual matters, and
- ▶ establishing a set of minimum service standards to maintain the reliability of SA Water's networks, its responsiveness to service interruptions and other customer service issues.

The regulatory determinations for excluded retail services involved:

- ▶ requiring SA Water to set prices for those services that broadly reflect the cost of providing those services, and
- ▶ establishing minimum service standards for connection services.

The Commission's economic regulation regime has, to date, been effective in supporting SA Water's delivery of lower-priced and more customer-focused service provision. Under the regime, SA Water has delivered real revenue and price reductions to customers, maintained service levels and improved its asset management capability. SA Water's drinking water and sewerage revenues are now approximately \$110 million per annum lower than the annual revenue outcomes in 2012, in real terms.

Throughout the SAW RD20 process, the Commission will continue to regulate the three broad classes of retail services that SA Water provides, on the basis that SA Water will continue to be the monopoly water and sewerage retailer for most South Australians.

The SAW RD20 process will:

- ▶ Put customers' interests and the consumer voice at the centre of the regulatory process.
- ▶ Provide opportunities for the early identification and resolution of issues and provide up-front clarity on regulatory issues.
- ▶ Obtain an earlier and wider range of evidence on matters relevant to the determination – particularly customer views – and to maximise the potential of existing bodies and knowledge bases (including other regulators and the Commission's and SA Water's consumer advisory committees).
- ▶ Embed SA Water's focus on ownership of its performance, the customer relationship and engagement and obtain a wider range of views to deliver a regulatory business plan to apply from 1 July 2020 (**business plan**) that meets customers' expectations.
- ▶ Introduce direct customer challenge and negotiation into the preparation of SA Water's draft business plan, in a constructive and non-adversarial approach, including through the use of a Negotiation Forum.

2 The role of the Commission and of SA Water

The Commission remains responsible for making the final regulatory determination which will require SA Water to provide the water and sewerage retail services valued by customers for the lowest sustainable cost. It will draw on the full range of evidence provided by all stakeholders in making the determination.

SA Water will continue to be accountable for delivering water and sewerage services that meet its customers' needs, while meeting all relevant regulatory obligations. It will be responsible for delivering its business plan and transparently reporting progress and outcomes to customers on an ongoing basis.

3 The Negotiation Forum

3.1 Purpose

The SAW RD20 process will raise issues for consideration early and introduce a greater level of direct customer challenge and negotiation into the preparation of SA Water's draft business plan. One way this will be achieved is through the use of a Negotiation Forum. The Negotiation Forum will ensure that the business plan submitted to the Commission has been thoroughly tested by a wide range of stakeholders.

3.2 Membership

The Negotiation Forum will comprise the Customer Negotiation Committee and the SA Water Negotiation Team, with an Independent Probity Advisor providing process and fairness oversight.

The Customer Negotiation Committee is comprised of:

- ▶ John Hill, the Independent Chairperson appointed by the Commission
- ▶ Mark Henley, a person drawn from the Consumer Experts Panel, and
- ▶ Meg Clarke, a person drawn from SA Water's Customer Working Group.

The SA Water Negotiation Team is comprised of:

- ▶ Roch Cheroux, Chief Executive (Chairperson of the Negotiation Forum)
- ▶ Anne Westley, General Manager Governance and Regulation, and
- ▶ Kerry Rowlands, General Manager Customer Delivery.

The Commission will not participate in the meetings of the Negotiation Forum. The Commission will provide guidance to inform the process of negotiation between the Customer Negotiation Committee and SA Water's Negotiation Team in the Negotiation Forum. Guidance will not be provided on the merits of any proposals being considered by the Negotiation Forum.

3.3 Scope of the negotiations

The scope of the matters to be discussed within the Negotiation Forum will be agreed between the Chief Executive Officer (**CEO**) of the Commission, Independent Chairperson of the Customer Negotiation Committee and CEO of SA Water. In agreeing the scope of the negotiations, the parties will have regard to:

- ▶ the requirements of the Essential Services Commission Act 2002 and the Water Industry Act 2012
- ▶ the extent to which SA Water has discretion to propose alternative options
- ▶ the extent to which the matter can be influenced by customer views, preferences and priorities
- ▶ the materiality of the proposed expenditure during the regulatory period
- ▶ the extent to which a price/service trade-off is available, and
- ▶ the technical complexity of the matter and the degree of specialist knowledge or expertise required to assess that matter.

3.4 Governance of the Negotiation Forum

SA Water will provide secretariat support to the Negotiation Forum as set out in 8.2.

The Chairperson of the SA Water Negotiation Team will chair the meetings of the Negotiation Forum.

A minimum of two members of the Customer Negotiation Committee and two members of the SA Water Negotiation Team are required to compose a quorum for an official meeting of the Negotiation Forum.

Proxies are not permitted to attend in the event that any member of the Negotiation Forum is unable to attend a meeting.

The Independent Probity Advisor must attend all meetings of the Negotiation Forum.

3.5 Conflict of interest

Members of the Negotiation Forum who believe that any of their external activities could conflict with their position on the Negotiation Forum should declare their interest as soon as practicable after becoming aware of the potential, perceived or actual conflict (and in any event within five business days).

Members of the Customer Negotiation Committee must declare any potential, perceived or actual conflict of interest to the Independent Chairperson, who may refer it to the Independent Probity Advisor for consideration and management. The Independent Chairperson or Independent Probity Advisor (as the case may be) reserves the right to excuse a member of the Customer Negotiation Committee from a meeting or particular discussion item where a conflict of interest is identified.

Members of the SA Water Negotiation Team must declare any potential, perceived or actual conflict of interest to the Chairperson of the Negotiation Forum for consideration and management, which may include excusing a member of the SA Water Negotiation Team from a meeting or particular discussion item where a conflict of interest is identified.

3.6 Information exchange and confidentiality

Members of the Customer Negotiation Committee and SA Water Negotiation Team must:

- ▶ keep confidential and not disclose or make directly or indirectly available to any third party any confidential information made available to them by the Commission, SA Water or other relevant party
- ▶ comply with any information security protocols developed by the Commission or SA Water or execute any confidentiality undertakings as required by the Commission or the Independent Chairperson
- ▶ prevent unauthorised use and disclosure of any confidential information, and
- ▶ not make any statement or representation to any person or media outlet about their involvement in the Customer Negotiation Committee or the Committee's operations without the Commission's written authorisation.

The Independent Chairperson, or the Independent Probity Advisor, must arrange for the members of the Customer Negotiation Committee to promptly return any documentation or media containing confidential information, at the request of the Commission, SA Water or other relevant party.

All documents, models, hardware and software provided to the members of the Customer Negotiation Committee by the Commission or SA Water remain the property of the Commission or SA Water, as relevant.

4 Customer Negotiation Committee

4.1 Purpose and objectives

The purpose of the Customer Negotiation Committee is to elicit and represent the perspectives, preferences and priorities of SA Water's diverse customer base in the Negotiation Forum to challenge SA Water as it prepares its proposed business plan for the next regulatory period: 1 July 2020 to 30 June 2024.

The Customer Negotiation Committee will seek to:

- ▶ understand and operate within the regulatory and legislative framework that applies to the decisions the Commission will make in SAW RD20 about SA Water's retail services and provide its advice consistent with these requirements
- ▶ understand SA Water's strategic direction and priorities, the broader regulatory and legislative requirements around the retail services it provides, past performance outcomes, future service delivery challenges, opportunities and investment needs
- ▶ understand current customer and regulatory priorities, as evidenced through the Consumer Experts Panel Priorities Report and representations made by or available from other regulators, including but not limited to the members of the Regulators Working Group
- ▶ elicit, understand and represent the perspectives, preferences and priorities of SA Water's diverse customer base on the matters subject to the negotiations, and
- ▶ constructively challenge and negotiate with the SA Water Negotiation Team with a view to agreeing on the matters to be included in SA Water's proposed business plan that will aim to provide water and sewerage services at the lowest sustainable price for the quality and reliability levels valued by customers.

All members of the Customer Negotiation Committee must ensure they are adequately prepared prior to any meetings of the Negotiation Forum.

The Customer Negotiation Committee is expected to respectfully challenge and negotiate in good faith with the SA Water Negotiation Team.

Significant weight will be given to the matters that the Negotiation Forum have successfully negotiated, where they are consistent with the guidance provided by the Commission on the matters within the scope of the negotiation.

The Customer Negotiation Committee is constituted solely for the purpose of challenging SA Water's proposed business plan, within the scope agreed between the Commission, Independent Chairperson and SA Water. It is not expected to be involved in policy decisions or represent the views of the South Australian community on matters outside the scope of the negotiations.

4.2 Appointments

Appointments to the Customer Negotiation Committee will be made by the Commission.

Each member of the Customer Negotiation Committee must be capable of credibly identifying, considering and representing the perspectives and preferences of SA Water's diverse customer base.

4.3 Duration of appointments for Customer Negotiation Committee members

The members of the Customer Negotiation Committee are appointed from the commencement date agreed with the Commission until the publication of the Draft Regulatory Determination by the Commission, unless otherwise agreed with the Commission.

4.4 Remuneration of Customer Negotiation Committee members

Members of the Customer Negotiation Committee will be paid a sitting fee for attendance at meetings of the committee and meetings of the Negotiation Forum. A travel allowance will also be available for members required to travel a distance of greater than 40 kilometres one way to attend meetings.

4.5 Resignation or termination of members

The Commission reserves the right to terminate their appointed members:

- ▶ for failure to attend two consecutive meetings of the Negotiation Forum without prior approval
- ▶ for misconduct (including a breach of confidentiality, or failure to declare a conflict of interest), or
- ▶ if the member is unable to competently perform the tasks assigned to members.

In the event of a resignation or termination, the Commission may appoint a new member as a replacement.

4.6 Members of the Customer Negotiation Committee do not represent or bind the Commission

The Customer Negotiation Committee is an advisory committee. A successful negotiation process does not require the Customer Negotiation Committee and SA Water to reach agreement on all aspects of SA Water's proposed business plan. The negotiation process is non-binding.

The Commission has not delegated its formal decision making powers under the Essential Services Commission Act 2002 and the Water Industry Act 2012 to the Customer Negotiation Committee. The Commission will remain responsible for making a regulatory determination that best serves consumers' long-term interests.

Members of the Customer Negotiation Committee are not, by virtue of their appointment or for any purpose, an employee or agent of the Commission. Members have no power or authority to bind or represent the Commission and must not represent themselves as such, or as an employee or agent of the Commission.

5 Independent Chairperson

5.1 Purpose

The purpose of the Independent Chairperson is to lead, manage, coordinate and report on the participation and input of the Customer Negotiation Committee in the Negotiation Forum.

5.2 Appointment

The Independent Chairperson will be appointed by the Commission.

5.3 Responsibilities

The Independent Chairperson is responsible for:

- ▶ contributing to the process to select the other two members of the Customer Negotiation Committee
- ▶ leading, managing and coordinating the Customer Negotiation Committee's input in the Negotiation Forum, including:
 - ensuring that the discussions of the Customer Negotiation Committee in the Negotiation Forum are within the scope of the matters as agreed between the Commission, Independent Chairperson and SA Water

- ensuring the members of the Customer Negotiation Committee are conducting themselves professionally and negotiating in good faith
- identifying areas where further information, research or analysis is required to allow the Customer Negotiation Committee to effectively participate in the negotiations and coordinating the requests for such information with the Commission
- ▶ leading managing and coordinating the meetings of the Customer Negotiation Committee outside of the Negotiation Forum, with administrative support for such meetings provided by the Commission, as required
- ▶ liaising with the Independent Probity Advisor to ensure any issues of probity or process are identified, including issues of fairness and potential conflict of interest, and are addressed as soon as possible
- ▶ providing timely updates on the status of the negotiations to the Commission, which may or may not include the Independent Probity Advisor, including identifying any issues with the negotiation process that cannot be resolved between the parties to that negotiation
- ▶ accurately recording the time spent by the members of the Customer Negotiation Committee and providing that information to the Commission to allow for the timely payment for members, and
- ▶ managing and preparing a public report on the process and outcomes of the negotiation for the Commission, which includes, as a minimum:
 - a high-level assessment of the effectiveness of the process
 - the issues agreed to between the parties, the nature and scope of the agreement, the reasons for that agreement, the key evidence used to support those positions and an assessment of how the agreed position will provide water and sewerage services at the lowest sustainable price for the quality and reliability levels valued by customers
 - the issues that could not be agreed between the parties, the reasons why those issues could not be resolved and any material evidentiary gaps that led to that outcome
 - any areas that the Customer Negotiation Committee believes the Commission should conduct further analysis prior to making its regulatory determination, and
 - observations or recommendations on areas where the process could be refined or enhanced in the future.

5.4 Duration of appointment

The Independent Chairperson is appointed from the commencement date agreed with the Commission until the publication of the Draft Regulatory Determination by the Commission, unless otherwise agreed with the Commission.

5.5 Remuneration

The Independent Chairperson will be paid an hourly rate as agreed with the Commission.

6 Independent Probity Advisor

6.1 Purpose

The purpose of the Independent Probity Advisor is to provide oversight of the integrity and fairness of the process and information exchange in the Negotiation Forum.

6.2 Appointment

The Independent Probity Advisor will be appointed by the Commission.

6.3 Responsibilities

The Independent Probity Advisor is responsible for:

- ▶ understanding the regulatory and legislative framework that applies to the decisions the Commission will make in SAW RD20 about SA Water's retail services and the broader regulatory and legislative requirements around the retail services SA Water provides, to ensure that the information provided to the Customer Negotiation Committee is consistent with these requirements and is sufficient to allow the Customer Negotiation Committee to effectively participate in the negotiations
- ▶ observing the behaviour of the parties in the Negotiation Forum to:

- ensure that the discussions in the Negotiation Forum are within the scope of the matters as agreed between the Commission, Independent Chairperson and SA Water
 - ensure that all parties are conducting themselves ethically, negotiating in good faith and acting fairly in the negotiation process
 - identify and ensure that any perceived or actual conflicts of interest are managed appropriately
 - provide advice to the Independent Chairperson on areas where further information, research or analysis may be required in order to allow the Customer Negotiation Committee to effectively participate in the negotiations or address any information asymmetry, and
 - identify, resolve or escalate issues requiring resolution to the Commission, in consultation with the Independent Chairperson, as soon as possible
- ▶ liaising with the Independent Chairperson outside of the Negotiation Forum to ensure any issues of probity or process are identified and addressed as soon as possible
 - ▶ providing timely updates on the status of the negotiations to the Commission, which may or may not include the Independent Chairperson, including identifying any issues with the negotiation process that cannot be resolved between the parties to that negotiation, and
 - ▶ managing and preparing a public report on the probity of the negotiation process for the Commission, which includes, as a minimum:
 - a high-level assessment of the effectiveness of the process
 - a summary of any probity issues that arose during the process and the actions taken to ensure that the issues were appropriately resolved, and
 - observations or recommendations on areas where the process could be refined or enhanced in the future.

6.4 Duration of appointment

The Independent Probity Advisor is appointed from the commencement date agreed with the Commission until the publication of the Draft Regulatory Determination by the Commission, unless otherwise agreed with the Commission.

6.5 Remuneration

The Independent Probity Advisor will be paid an hourly rate as agreed with the Commission.

7 SA Water's Negotiation Team

7.1 Purpose and objectives

The purpose of the SA Water Negotiation Team is to:

- ▶ present SA Water's regulatory proposals to the Customer Negotiation Committee, including those based on consumer preferences, and
- ▶ consider, address and negotiate the range of matters presented to it by the Customer Negotiation Committee in relation to SA Water's regulatory proposals for the purposes of the Negotiation Forum.

The SA Water Negotiation Team will:

- ▶ provide accurate, informative and timely information and data for the purposes of negotiations when requested
- ▶ seek to understand current customer and regulatory priorities, as evidenced through the Consumer Experts Panel Priorities Report and representations made by or available from other regulators, including but not limited to the members of the Regulators Working Group, and
- ▶ negotiate in good faith with the Customer Negotiation Committee and have regard to the relevant feedback and preferences of that committee when finalising SA Water's proposed business plan that will aim to provide water and sewerage services at the lowest sustainable price for the quality and reliability levels valued by customers.

7.2 Appointments

Appointments to the SA Water Negotiation Team will be made by SA Water.

SA Water will appoint three representatives to its negotiation team. The parties appointed to the negotiation team must have the ability and authority to negotiate directly with the Customer Negotiation Committee on the matters within the scope agreed between the Commission, Independent Chairperson and SA Water prior to the commencement of the negotiation period.

7.3 Resignation or termination of members

SA Water reserves the right to terminate their appointed members:

- ▶ ☐ for failure to attend two consecutive meetings of the Negotiation Forum without prior approval
- ▶ ☐ for misconduct (including a breach of confidentiality, or failure to declare a conflict of interest), or
- ▶ ☐ if the member is unable to competently perform the tasks assigned to members.

In the event of a resignation or termination, SA Water may appoint a new member as a replacement.

8 Resources and support for the Customer Negotiation Committee and Negotiation Forum

8.1 Support for the Independent Chairperson and the Customer Negotiation Committee

The Commission will pay the members of the Customer Negotiation Committee as set out in clauses 4.4 and 5.5.

The Commission will also provide arms-length, non-financial support to the Customer Negotiation Committee by providing:

- ▶ administrative support, which includes but is not limited to:
 - processing and approving payments for members
 - assistance with arranging meetings for the Customer Negotiation Committee outside of the Negotiation Forum and providing office accommodation for such meetings
 - computers or other electronic resources required to ensure that the information provided for the negotiation process is available for members
 - training or information sessions on regulatory, economic, engineering, asset management, service delivery, customer insights and research or financing matters, as required, and
- ▶ any other support or resources as agreed between the Independent Chairperson and the Commission from time to time.

8.2 Secretariat support for the Negotiation Forum

SA Water will provide secretariat support for the Negotiation Forum, including but not limited to:

- ▶ a single point of contact for the members
- ▶ arranging the meetings of the Negotiation Forum
- ▶ coordinating and providing the information required for meetings, ensuring that such information is provided in a timely manner and in such a way as to allow members to understand it, to analyse it and to formulate questions
- ▶ providing office accommodation for the meetings of the Negotiation Forum
- ▶ minute taking in the meetings of the Negotiation Forum and circulation of those minutes in a timely manner to allow members to verify the accuracy of the information recorded in those minutes
- ▶ publication of relevant materials from the Negotiation Forum, as agreed with the Customer Negotiation Committee, on its website, and
- ▶ any other support or resources as agreed between the Independent Chairperson, Independent Probity Advisor and SA Water from time to time.

9 Requests for information or expert advice

The Negotiation Forum will be provided with briefing materials prior to the commencement of the negotiation period. The briefing materials will include, but may not be limited to:

- ▶ the Commission's Guidance Papers
- ▶ the report from the Consumer Experts Panel, and
- ▶ information from the Regulators Working Group.

The members of the Negotiation Forum, can request information from the Commission on any matters requiring clarification or further guidance at any time. All requests for information will be made to the Commission through the Independent Chairperson.

The Customer Negotiation Committee, or the Negotiation Forum, can request further information from the Consumer Experts Panel and the Regulators' Working Group throughout the negotiation period. Requests for information can be made directly to those parties or coordinated by the Commission through the Independent Chairperson.

The Customer Negotiation Committee may request independent expert advice on any matter relevant to the negotiations. The Commission will coordinate the process for obtaining that expert advice from an independent party, consultant or contractor, where payment is required for that advice.

Where the SA Water Negotiation Team and Customer Negotiation Committee agree that advice on a matter relevant to the negotiations is required, the Negotiation Forum will agree on the scope of the advice sought and the advice will be provided to all members of the Negotiation Forum. The Negotiation Forum may agree to submit the advice as part of the evidence to support the proposed business plan or the wider SAW RD20 review process.

10 Dispute resolution

The Independent Chairperson and the Independent Probity Advisor should seek to resolve any issues that arise in the Negotiation Forum as soon as possible with the other members of the Negotiation Forum and in consultation with the Commission.

Where an issue cannot be resolved in the Negotiation Forum, the Independent Chairperson and the Independent Probity Advisor must advise the Commission as soon as possible about the issue.

The Commission may convene a meeting with the Independent Chairperson, Independent Probity Advisor and SA Water to resolve the issue outside of the Negotiation Forum. This may include the Commission providing further information or directions to the Negotiation Forum on the way the issues should be resolved.

The Commission reserves the right to amend the scope of the negotiations or conclude the negotiation process, if required. The Commission will consult with the Independent Chairperson, Independent Probity Advisor and SA Water prior to taking any such action.

11 Review of this Charter

This Charter may be amended from time to time by agreement between the Commission, SA Water, the Independent Chairperson, the Independent Probity Advisor and other parties bound by the terms of this Charter (with such agreement to be in writing).

12 Definitions

Unless the contrary intention appears, the terms set out below have the following meaning:

Commission	Essential Services Commission, established under the Essential Services Commission Act 2002
Consumer Experts Panel	An advisory group comprised of the members of the Commission's Consumer Advisory Committee and SA Water's Consumer Advisory Groups
Customer Negotiation Committee	An advisory group appointed by the Commission to elicit and represent the perspectives, preferences and priorities of SA Water's diverse customer base in the Negotiation Forum and consisting of the Independent Chairperson and two other members drawn from the Consumer Experts Panel and SA Water's Customer Working Group
Draft Regulatory Determination	The draft SAW RD20 made by the Commission, released for public consultation
Independent Chairperson	An advisor appointed by the Commission to lead, manage and coordinate the input from the Customer Negotiation Committee in the Negotiation Forum
Independent Probity Advisor	An advisor appointed by the Commission to provide oversight of the integrity and fairness of the process and information exchange in the Negotiation Forum
Negotiation Forum	A series of meetings between the Customer Negotiation Committee, SA Water Negotiation Team and Independent Probity Advisor to introduce direct customer challenge and negotiation into the preparation of SA Water's draft business plan
Proposed business plan	SA Water's draft regulatory business plan for the period 1 July 2020 to 30 June 2024
Regulators Working Group	A series of meetings between the group of the regulators responsible for the economic, environmental, public health, social, and technical regulation of SA Water to promote coordination between regulators of SA Water
SA Water	SA Water Corporation
SA Water Customer Working Group	An advisory group established by SA Water from a representative selection of its customer base
SA Water Negotiation Team	Three representatives from SA Water to represent SA Water in the Negotiation Forum
SAW RD20	The regulatory determination made by the Commission, in accordance with the requirements of the Essential Services Commission Act 2002 and the Water Industry Act 2012, to apply to SA Water from 1 July 2020 to 30 June 2024

13 Execution

Members of the Negotiation Forum agree to be bound by the requirements of this Charter.



Adam Wilson
Chief Executive Officer
Essential Services Commission



John Hill
Independent Chairperson



Roch Cheroux
Chief Executive Officer
SA Water Corporation



Mark Henley
Customer Negotiation Committee member



Gaby Jaksa
Independent Probity Advisor



Meg Clarke
Customer Negotiation Committee member

