SACOSS
South Australian Council of Social Service

SACOSS' Submission to the Essential Services Commission of South Australia on SA Water Regulatory Determination 2020 - Draft Determination

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SACOSS wishes to acknowledge the extensive contribution of Luke Berry, Engineroom Infrastructure Consulting Pty Ltd, to this submission.

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Summary

SACOSS would like to thank the Essential Services Commission of South Australia (the Commission) for the opportunity to comment on its Draft Determination on the revenues to be earned by SA Water during the 2020 to 2024 period, dated 4 March 2020[1] (the Draft Decision).

SACOSS is broadly supportive of the Commission's well-reasoned and thorough Draft Decision. However, we do consider the Draft Decision could be revisited in a few areas to support better outcomes for consumers. In that context, this submission raises some issues for further consideration by the Commission.

SACOSS is seeking the Commission consider being more explicit about the weight it places on consumer views gathered by SA Water during its consumer engagement process, especially the weight placed on the willingness to pay (WTP) survey results from the Haymakr and Marsden Jacobs surveys. From the commentary in the Draft Decision, it was not clear to SACOSS how the WTP survey results were considered alongside other consumer views, particularly around some of the decisions on capital projects such as the Metro Adelaide water quality improvement project and the Water Mains Improvement project.

We agree with the Commission's draft decision to exclude the Zero Cost Energy Future project from the regulated asset base.

We consider the Commission could reconsider some of the capital projects such as the Metro Adelaide water quality improvement project and the Water Mains Improvement project. We also think the Commission could review aspects of the Draft Decision on approved IT expenditure, in order to find a firmer basis to support the conclusion that the IT expenditure is contributing to savings across capital or operating expenditure.

We accept the Draft Decision on the Northern Adelaide Irrigation Scheme (NAIS), and regional water quality initiatives. We agree the State Government should set policy around water supply issues in more remote parts of the State to guide the role of SA Water. We support the Commission's position on the Eyre Peninsula and Kangaroo Island desalination plants and Glenelg to Adelaide Parklands (GAP expansion) recycled water network expansion.

We generally support the Commission's position on operating expenditure allowances. We consider the Commission could reexamine some elements of the rate of return in the Draft Decision; in particular the value of the equity beta assigned to SA Water, and the length of the averaging period.

We endorse the Commission's decision to review future approaches to consumer engagement with a view to encouraging SA Water to engage with consumers prior to

[1] Essential Services Commission of South Australia, *SA Water Regulatory Determination 2020, Draft Determination: Statement of Reasons*, 4 March 2020 https://www.escosa.sa.gov.au/ArticleDocuments/21462/20200304-Water-SAWRD20-DraftDecision-StatementOfReasons.pdf.aspx?Embed=Y

developing its regulatory proposal. We also continue to strongly support the primary position of the Commission in reviewing regulatory proposals. We believe that while consumers should be involved in the development of the proposals, this involvement should not replace the professionalism and rigour the Commission brings in evaluating the resulting regulatory proposal.

Consumer engagement

SACOSS supports early, extensive and effective consumer engagement in the course of developing regulated companies' spending proposals.

For the current regulatory proposal, SA Water consulted with a range of consumers and consumer groups and conducted two willingness to pay (WTP) surveys to gather evidence of consumer views to support elements of its capital and operating expenditure programs.[2] Our submission on the regulatory proposal expressed some concerns about the WTP surveys, namely that they:

- can be overly concerned with starting and ending points
- tend to favour the status quo
- can ignore stacking effects (that is the combined effect on prices of supporting a number of expenditure programs)
- can deliver contradictory findings, for example that respondents want additional spending *and* lower prices
- may confuse respondents such that their responses relate to something other than the findings being drawn from them; for example, we observed what appeared to be a possible mix-up in responses by the participants in the surveys between WTP and the valuation of the expected costs/benefits of higher priced options
- may not evaluate the full range of alternatives, instead presenting 'either / or choices' to respondents.

While WTP surveys can have some benefits, SACOSS would be more confident in the results of future surveys if an independent third party or the Customer Negotiation Committee were more involved in the design and conduct of those surveys, as opposed to the regulated business.

SACOSS is concerned that the weighting accorded to the WTP evidence in aspects of the Commission's decision-making was unclear. SACOSS considers the Commission's Draft Decision could have provided more detailed reasons explaining the relative weighting the Commission placed on the WTP survey results compared to other evidence. We are also concerned only part of the Marsden Jacobs WTP report has been released for review.

The Commission did cite some weaknesses in the WTP work:[3]

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[2] See SA Water 'Our Plan 2020-24', Appendix C, Our Plan Customer Engagement

[3] Draft Determination, p. 67 footnotes and italics removed

'Weaknesses with this foundational work [in assessing customer WTP] were noted by both the CNC and Cardno. The CNC's view is that SA Water began the process of discerning what its customers value with the main outcomes predetermined. That is, that 'SA Water was seeking confirmation of the outcomes it had already decided were important, rather than … eliciting what was important to customers, unprompted by preconceptions.' Cardno also critiqued the methodology used in this work and found that the link between the customer engagement and the resulting corporate strategy was not clear in some instances. Cardno concluded 'that there is potential for this lack of clarity to impact on prudent decision making.'

while noting:[4]

'Despite its findings of weaknesses in this foundation work, the CNC thought the key themes emerging from the process were nevertheless likely to be correct, being based on earlier research and SA Water's intuition of what its customers value.'

However, in reviewing specific capital projects, the Commission did not express any particular qualifications about the weight that it put on the findings of the WTP surveys. In SACOSS' view, the extent to which the Commission relied on the WTP findings, and any adjustments for any methodological weaknesses, was therefore unclear in its reasons for decision. SACOSS considers that it would have been valuable for the Commission to make specific observations about the WTP results, and the extent to which they were relied upon compared to other material, particularly in relation to supporting particular capital spending programs.

Proposed capital projects program

Introduction

Capital spending supports the construction of new long-life assets that are required to deliver regulated water and sewerage services for South Australian consumers.
For the four years of the regulatory period from 2020 to 2024, SA Water sought a capital program of $1,842.0m. The Draft Determination was to award $1,471.5b for capital spending.[5]

SACOSS' submission on the regulatory proposal flagged issues for consideration across twelve areas of the capital program. SACOSS has some concerns about elements of the capital spending program allowed in the draft decision, as outlined in more detail below.

Metropolitan Adelaide water quality improvement

SA Water proposed a Metro Adelaide water quality improvement for an investment of $122.2m.

[4] Draft Determination, p. 68 footnotes removed

[5] Draft Determination, pp. 295-296, Table A3.3

The project comprises upgrades to the Happy Valley water treatment plant for $68.6m and the introduction of chloramination for $53.6m. The first upgrade to the Happy Valley water treatment plant is considered more an improvement to taste and aesthetics than contributing to an improvement in hygiene.

SACOSS' submission to the regulatory proposal questioned whether the Happy Valley water treatment plant upgrade was warranted and argued any decision about it should be based on the extent of complaints about water quality and the level and significance of performing the plant upgrade and the chloramination works together.[6] SACOSS accepted the need for the chloramination works.

The Commission's Draft Determination accepted the advice of its consultant, Cardno, that there were 'material cost benefits to undertaking the two parts of the project together'.[7] It also accepted Cardno's advice to spread the project over six rather than four years in order to better manage the technical challenges of the project and therefore allowed $80.8m of expenditure during the 2020-2024 regulatory period. The remainder of the funding would presumably be allocated in the early part of the subsequent regulatory period (post 2024).

The Commission commented that (our emphasis):[8]

> *'While this investment is not required to meet the requirements of the ADWG, it is expected to provide wider public health and environmental benefits. There is clear support for introducing chloramination from SA Health, the CNC, and Consumers SA. However, aesthetic improvements that do not have public health benefits are not supported by SACOSS, Business SA or Uniting Communities.* ***These reservations need to be considered alongside the results of the willingness to pay research which showed that the majority of customers are willing to pay for the costs of the metropolitan water quality projects ($124 million) to improve the taste of drinking water.*** *On balance, the Commission is proposing to accept that both elements of the metropolitan water quality program are prudent and efficient, subject to the adjustments recommended by Cardno to extend the rollout of the program across six years rather than four.'*

SACOSS considers it is unclear how the Commission balanced the differing views on the need for this project. Especially given the Commission rejected other capital spending projects that were apparently supported by the WTP survey findings, such as regional water quality projects. SACOSS questions the Commission's relative weighting of the findings in the WTP surveys, compared with the views contained in submissions on the regulatory proposal. As the Commission noted, SACOSS, Business SA and Uniting Communities did not support the upgrades to the Happy Valley water treatment plant.

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[6] SACOSS submission to regulatory proposal, p. 13

[7] Draft Determination, p. 129

[8] Draft Determination, p. 262, emphasis added

Additionally, while the Draft Determination did refer to the WTP findings, it did not directly address the level of consumer complaints about metropolitan water quality aesthetics, which might be a more reliable guide to willingness to pay than a theoretical survey of WTP.

Moreover, the Draft Determination noted concerns about how to measure any improvements in water aesthetics. The Determination stated that:[9]

> *'At this point in time, SA Water has not adequately described the scientifically-measurable aesthetic improvements it is expecting to achieve through this program as distinct from the goal of achieving an improvement in customer perceptions of water quality. The latter is considered particularly important, as it is a key driver for this investment, and it will be difficult for SA Water to demonstrate how a change in customer perceptions of water quality, (whether up or down) is directly associated with this investment. For example, SA Water has advised that there have been 702 complaints about earthy or musty water in Adelaide over the last five years, which are linked with algal outbreaks (which affect water aesthetics). However, the extent to which these complaints were linked to scientifically-measurable issues with the quality of the water, as opposed to customer perceptions about the quality of the water, are unclear. The Commission will require SA Water to do further work to establish the pre-investment baseline for drinking water quality performance on both of these measures to allow for better tracking of the impact of this investment. This is considered important, as the stated key driver for this increased level of investment is responding to customer willingness to pay for improved service, which SA Water would reasonably accept it must be accountable to its customers for delivering.'*

As the Commission requires more work to be done to determine how to measure improvements in aesthetics, it could be asked whether performing this work should be a prerequisite for approval of the capital expenditure on water aesthetic improvements.

SACOSS notes that Cardno considered there were cost-benefits in performing the Happy Valley plant upgrade and the chloramination together but did not disclose the quantum of this benefit. The Commission may wish to consider postponing the Happy Valley water treatment plant upgrade component of the project unless the cost-benefits of performing this component at the same time as the chloramination component of the project are very compelling.

[9] Draft Determination, p. 262

Regional water quality

SA Water proposed to spend $37.7 million of capital expenditure to upgrade non-potable water supply for 340 properties.

The Draft Decision rejected this expenditure because it 'proposes a partial solution that provides limited incremental benefits to a small number of customers at a very high cost per directly-benefitting customer'.[10]

SACOSS supports the Commission's Draft Decision on the regional water quality improvement proposal.[11] We commend SA Water in proposing to address, where it can, the pressing issue of water quality and supply in remote communities. However, as SA Water is responsible for some but not all remote residents, it is sensible that regional water quality issues should be addressed holistically through Government policy directives (SACOSS would suggest as a matter of urgency). We are concerned that partial solutions may exacerbate existing inequalities around access to water between remote customers that are served by SA Water and remote customers that are not. A government review could examine the extent and geographic range of SA Water's obligation to supply, and broader matters around where and how potable water supplies are provided and funded. We acknowledge this may then lead to a contingent project application.

It is important to point out that SACOSS considers the issue of water supply, water quality and water governance in remote communities in South Australia should be a matter of the highest priority for the South Australian government. It is unacceptable that remote Aboriginal communities in South Australia do not currently have access to safe drinking water and sanitation; in clear breach of Australia's international obligations and commitments.[12] SACOSS strongly supports the Commission in playing whatever role it is able, to assist with the establishment of a permanent cross-sectoral government task force to identify, address and solve these issues.

To be absolutely clear, supporting the Commission's Draft Decision on this proposal does not mean SACOSS doesn't support concerted action to address the issue of equitable access to clean water and sanitation in remote communities. SACOSS repeats our view that these issues should be of paramount concern for the South Australian and Federal governments. We acknowledge SA Water's current proposal may form part of a broader governmental strategy, but we consider there should be a holistic government-driven approach to solving this long-overdue problem. SA Water's partial solution should prompt government action to address the problems of equitable access and sanitation in *all* remote communities in South Australia, and we support the Commission in playing a role in this process.

[10] Draft Determination, p. 130

[11] Draft Determination, p. 262

[12] In July 2010 the United Nations General Assembly Resolution 64/292 recognised the right to safe and clean drinking water and sanitation "as a human right that is essential for the full enjoyment of life and all human rights." The Sustainable Development Goals include a goal specifically focused on water and sanitation (SDG 6) to 'ensure availability and sustainable management of water and sanitation for all'. See also the Community Guide to the UN Declaration on the Rights of Indigenous Peoples.

Regional towns water aesthetics

SA Water proposed to invest $24.8 million during SAW RD20 to improve water aesthetics in regional towns.

The Draft Determination proposed to remove the expenditure because:[13]

> *'SA Water has not established a long-term program for regional water aesthetic upgrades (the need for which was identified at SAW RD16), or a clear line of sight between its proposed infrastructure projects and the improvements customers should expect.'*

The Commission proposed instead to:[14]

> *'…allow expenditure for development of that long-term plan (with the amount to be determined), and place the regional water quality improvement program on a 'contingent project' list, with its progression contingent on finalisation of that long-term plan, and establishment of a clear line of sight.'*

SACOSS accepts the Commission's decision to remove the expenditure at this time and to instead fund an amount for the development of a long term plan. However, SACOSS is less sure about the idea of making the expenditure the subject of a contingent project. It is unclear to SACOSS whether it would be best to place the expenditure on a contingent basis at this stage following the completion of the plan. It may be better to consider the expenditure in the context of the overall plan for regional water quality similar to the considerations for the regional water quality project above. Under this approach, SA Water could address regional water quality issues by working with the State Government and other responsible parties[15] to:

- identify priority issues and relevant expenditures to address each issue
- select priority programs and schedules over the next regulatory period and subsequent regulatory periods
- determine the scope of what it can address within its charter and whether its charter should be modified
- consider whether funding should come from all users on a smeared basis or from government sources
- agree on the impact of any cost over-runs, and
- agree the plan and any modifications to SA Water's charter with government.

Following that process, work could begin if desired in 2020-24 through a government directive.

[13] Draft Determination, p. 265

[14] Draft Determination, p. 265

[15] Such as the Federal Government

Zero Cost Energy Future

SA Water proposed to invest in local generation to reduce or remove its need to rely on grid-supplied electricity for treating and pumping water. This program is known as the zero cost energy future (ZCEF) program.

SA Water invested $275m in the ZCEF during the 2106-2020 regulatory period. This was outside the scope of expenditures approved for SAW2016. It proposed to spend another $104m during the 2020-2024 regulatory period to complete the works, for a total cost of $379m.

The Commission stated in the Draft Determination that:[16]

> *'The Draft Determination does not include a revenue allowance for SA Water's investments in solar and battery storage under its ZCEF initiative because it is not a retail service under the WI Act. SA Water announced the initiative as a means of delivering low and stable prices to its customers. However, information provided by SA Water demonstrates that the primary benefit of this initiative is to earn revenue by producing and selling electricity into the National Electricity Market, rather than offsetting SA Water's electricity purchases as a retail operating cost. This does not meet the definition of a retail service under the WI Act and so cannot be funded by SA Water's customers through the revenue caps set for drinking water and sewerage retail services.'*

The Commission expanded on this by observing that:[17]

> *'A 'retail service' is defined in section 4 of the WI Act to include a service constituted by:*
>
> > *(a) the sale and supply of water to a person for use (and not for resale other than in prescribed circumstances (if any)) where the water is to be conveyed by a reticulated system; or*
> >
> > *(b) the sale and supply of sewerage services for the removal of sewage, (even if the service is not actually used) but does not include any service, or any service of a class, excluded from the ambit of this definition by the regulations.*
>
> *Accordingly, any operations or services falling outside the scope of the above definition are not subject to price regulation by the Commission. For example, SA Water's water testing service provided through the Australian Water Quality Centre, is not a retail service and is not subject to price regulation under the WI Act. As is discussed in Chapter 5 of this report, SA Water's merchant electricity generation service, provided under the ZCEF initiative, is also not a retail service.'*

[16] Draft Determination, p. 5

[17] Draft Determination, p. 25

SACOSS accepts and supports the Commission's draft decision. The Draft Determination addresses the concerns of the Customer Negotiation Committee that a large scale investment in energy infrastructure exposes customers to significant risks outside the scope of water and sewerage supply services.

Water mains improvement project

SA Water proposed to spend $144.2m during 2020-24 to improve water mains performance and reduce interruptions. Of this $144m, $112.0m would be spent on mains replacement, and $32.2m on smart networks, pressure management, and additional isolation valves.[18] The program aims to reduce the number of customers experiencing three or more interruptions in a year from the current average level of 2,862 to 1,750.[19]

The Draft Determination noted that during 2016-20, SA Water had spent $53.6m more than the budget ($83.2m) on mains replacement. This means that SA Water has already spent significantly more than budget in recent years on mains replacement. Cardno considered that the over-expenditure during 2016-20 was disproportionate to the deterioration in performance, which was largely confined to the 2016 year.[20] This would suggest that SA Water should be ahead in respect of expenditure on water mains replacement compared to the needs identified in SAW RD2016.

For 2020-24, however, SA Water is proposing a significant expansion in spending on mains replacement compared to the 2016-20 regulatory period with the proposal to expand spending to $144.2m. In this context, SACOSS' submission to the regulatory proposal argued that:[21]

> *It would seem premature to spend the $112m earmarked for mains replacement given:*
>
> - *the other investment is designed to collect additional information about mains condition that could be used to determine the appropriate age and condition at which to replace mains, or how to use a combination of pressure management and valve installations to reduce the impact of water mains bursts*
> - *the rate of failure of water mains has been stable for many years apart from an aberration in 2016*
> - *"SA Water presented data to the Committee which demonstrates that leakage from its network is very low by both national and international standards"*
> - *"both the absolute number of water main failures and the number of failures per 100 kilometres of pipe have been on a downward trajectory for many years."*

[18] Draft Determination, p. 120

[19] Draft Determination, p. 119 and 120

[20] Draft Determination, p. 121

[21] SACOSS submission to regulatory proposal, p.17 footnotes omitted

In respect of the proposed expenditure, the Draft Determination was to reduce the proposed expenditure on smart networks, pressure management, and additional isolation valves from $32.2m by $13.2m to $19m.[22] Overall, the Draft Determination proposed to reduce the capital allowance to $107m, with a significant proportion of this coming from reducing the annual expenditure on metropolitan mains replacement from SA Water's proposal of $16m per year to $10m per year.

SACOSS supports the Commission's draft determination to reduce proposed expenditure on smart networks, pressure management, and additional isolation valves by $13.2m.

However, SACOSS urges the Commission to re-examine the amount allowed for mains replacement. First, as noted above, SA Water overspent in the 2016-20 regulatory period, so should be in a strong position in terms of the performance of its mains. Second, the Customer Negotiation Committee also considered the proposed level of mains replacement capital expenditure was too high. Third, as the Commission noted, the outcome of the willingness to pay studies was to reject improvements in service in relation to customers experiencing three or more unplanned supply interruptions.[23] Expenditure in the range of $10m would appear to improve rather than maintain services.

In assessing whether $10m of expenditure would maintain or improve services, the Commission relied heavily in determining an adequate level of expenditure on the outputs from SA Water's Pipeline Asset and Risk Management System (PARMS) models.[24]

The PARMS model outputs are presented in Figures A3.1 (predicted failure rates for metro for different levels of annual investment) and A3.2 (Predicted properties experiencing 3 or more unplanned interruptions per year (metro) for different levels of annual investment) in the Draft Determination.

Examining Figures A3.1 and A3.2, the outcomes under a range of different expenditures seem relatively tightly bunched. For example, Figure A3.1 shows little variation in the period from 2020 to 2024 across expenditure levels from $0 per year to $24m per year, with the burst rate varying in 2024 between these two levels of expenditure from 21 to around 22.5 bursts per 100km per year. Figure A3.2 shows that the outcomes under spending of $6m, $8m, $10m, $12m, and $16m are close, even over the extended period to 2044. Moreover, figure A3.2 shows that for any level of expenditure above $0, performance improves over time compared to the starting performance in 2020. Additionally, the performance outcomes under different levels of expenditure flip often, so that for example, spending $8m per year is often depicted in Figure A3.1 as worse than spending $6m per year. This reminds us

[22] Draft Determination, p. 122

[23] Draft Determination, p. 121-122

[24] Draft Determination, pp. 238-239

that figures A3.1 and A3.2 are models with estimates and outcomes that are uncertain in practice, and which rely heavily on the underlying formulas.

Overall, it would seem from Figure A3.2 that performance is likely to improve or stay the same in terms of SA Water's preferred metric of reducing burst mains three or more times per year even if spending is at reactive levels and is certainly forecast to improve at the minimum modelled expenditure of $6m per year. Figure A3.1 shows that at spending of $6m per year, outcomes in 2024 would be a little worse in 2024 than in 2020 but would be a little better than 2020 in 2025.[25] This would indicate that, based on the PARMS outputs, that expenditure of $6m per year would be adequate to maintain current levels of performance and to improve performance for the worst performing areas of the network.

SACOSS would recommend considering whether an expenditure around $6m per year would be adequate in maintain acceptable service levels.

Northern Adelaide Irrigation Scheme

The Northern Adelaide Irrigation Scheme (NAIS) is a plan to treat 12GL of wastewater from Bolivar wastewater treatment plant to an acceptable standard and then using it for irrigation of food crops on the Northern Adelaide plains rather than discharging it into Gulf St Vincent.[26] The scheme was not anticipated in the 2016-20 regulatory period but was directed in 2017 by the relevant State Minister. The Federal and State Governments have made financial commitments to the project and the project is well underway as at the time of the regulatory proposal in November 2019.

In its submission to the regulatory proposal, SACOSS expressed concern about how capital contributions from the State and Federal Governments should be treated and about any exposure of SA Water to cost overruns.[27]

The Draft Determination was that:[28]

> *'While the NAIS was not part of either the SAW RD16 or SAW RD20 sample of projects and programs of work, the Commission is aware of the importance of ensuring that costs and revenues are appropriately allocated, in order to protect sewerage customers from commercial risks.*
>
> *…, prior to the final determination, the Commission intends to review the allocation of both capital expenditure and contributions for the NAIS between direct control retail services, excluded, and non-regulated services, to ensure that all NAIS related costs and revenues are treated appropriately.*
>
> *…*

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[25] Draft Determination, p. 239, comparing $6m per year and $8m per year expenditure for 2024 and 2025

[26] Draft Determination, p. 228

[27] SACOSS submission to regulatory proposal, p. 18

[28] Draft Determination, p. 229

The Commission will monitor, through its routine reporting, SA Water's overall expenditure and performance. The Commission also expects project-specific documentation on the outcomes this expenditure achieves to be available to support an ex-post review of a sample of projects and programs at the end of SAW RD20.'

SACOSS accepts the Commission's Draft Determination.

Eyre Peninsula desalination plant

SA Water proposed to spend $91.2m to create a reverse osmosis plant to reduce reliance on the depleting reserves in the Uley Basin and to improve water quality. SA Water has already spent $13.1m in the 2016-2020 regulatory period and SA Water proposed to spend a further $78.1m during the 2020-2024 regulatory period. SA Water proposes to build a 4 GL reverse osmosis plant but to build an 8 GL marine intake for the plant to cater to future expansions in demand.

The Draft Determination accepted SA Water's proposal.[29] The Commission accepted the proposal to "upsize the marine and transfer pipeline infrastructure [to 8 GL] at this time is a prudent option, given the limited marginal cost of this work [5.3m]when compared to having to duplicate the infrastructure at a later date [$30m]."[30]

SACOSS accepts the Draft Determination.

Kangaroo Island desalination plant

SA Water proposed to build a reverse osmosis desalination plant to supply a golf course on Kangaroo Island at a cost of $26.7m.

A number of objections were raised at the regulatory proposal stage to this expenditure, including:

- It is unclear if the golf course will proceed as the development application for the course has lapsed.
- It appears that costs are proposed to be collected from other customers though no details are clear.
- The golf course is only paying for part of the water infrastructure capital costs although demand from other customers was only forecast to arrive after 2030.
- The project may be outside SA Water's charter.

The Commission's draft determination was that:[31]

[29] Draft Determination, p. 221

[30] Draft Determination, p. 223 with the costs in brackets referred to on p. 221

[31] Draft Determination, p. 279

'… the Commission understands SA Water has not yet completed final contract negotiations with the proposed major customers for the additional water, and that the outcome of these negotiations will directly affect the viability of these projects. Accordingly, the draft determination for both projects is that they will be treated as contingent projects until sufficient evidence is provided to substantiate the proposition that the demand required to make these projects prudent and efficient is firm.'

SACOSS considers that if the project is proposed as a contingent project, it should only be accepted for the firm demand represented by the golf course. Given the doubts expressed in report of the Chair of the Customer Negotiation Committee about whether the project fell within the charter of SA Water, the Commission could consider in its final determination clarifying whether the project is within or outside its charter.

Glenelg to Adelaide Parklands (GAP expansion) recycled water network expansion

SA Water proposed to spend $10.0 million to expand the recycled water mains and reticulation systems fed by water from the Glenelg Wastewater Treatment Plant to serve a development at Tonsley.[32]

SACOSS' submission to the regulatory proposal noted that:[33]

'…the Haymakr survey appeared to find that customers would be WTP an additional 1.51 per cent on their bills to provide free recycled water to all Council areas to irrigate public open space. It might be that if it was explained that Councils were willing to pay for this service through rates (levied on the parties most likely to benefit from the greener public open spaces), then customer WTP to pay for this service might fall away.'

The Draft Determination was:[34]

'… to remove the $10.0 million of new capital expenditure proposed for the GAP expansion because it is neither prudent nor efficient. SA Water has demonstrated that this level of expenditure on providing recycled water for public open spaces is broadly supported by customers. However, SA Water has not demonstrated firm demand for the proposed recycled water services, nor a specific EPA requirement. Therefore, the draft determination is to place the GAP expansion on a 'contingent project' list, with its progression contingent on either firm demand from recycled water customers, or a specific regulatory requirement.'

SACOSS accepts the position in the Draft Determination.

[32] Draft Determination, p. 269

[33] SACOSS submission to regulatory proposal, p. 9

[34] Draft Determination, p. 269

IT expenditure

In its regulatory proposal, SA Water proposed to spend $143m on IT expenditure during the 2020-2024 regulatory period. The proposal was supported by a KPMG benchmarking study and review.

SACOSS noted that the options analysis for early stage projects was still to be completed, and the KPMG benchmarking study did show a clear rise in benchmarked IT costs compared to SA Water's comparator group.

SACOSS was concerned that the efficiency justifications presented for most of the IT expenditure were mainly oriented to savings in capital expenditure, but that SA Water had not identified clear savings in capital expenditure. SACOSS argued that SA Water would need to find offsetting or larger savings in capital or operating expenditure as it didn't appear that the expenditure was in new areas of cost such as cyber-security or in maintaining business-as-usual processes.

The Draft Determination was to allow $133.9m for IT capital expenditure, noting it was 'a four percent increase on the $128.4 million of IT capital expenditure in SAW RD16'.[35] The Commission also examined the scope for this allowed level of IT capital expenditure to generate savings in operating expenditure. The Commission stated that it was:[36]

> *'…concerned that the expected outcomes of SA Water's proposed IT capital expenditure, particularly in relation to efficiencies and improvements for customers, are not clearly defined. This makes it hard to assess whether each project is worthwhile. That is, whether project costs are justified by the value customers place on a service improvement, or the value of a process efficiency.*
>
> *…*
>
> *Where the purpose of a project is to achieve efficiencies, SA Water must be confident of the expected efficiencies, and that they justify expenditure. As expressed by SACOSS, the expected efficiencies should at a minimum, exceed the costs of the project. As each project is delivered, its outturn efficiencies must be quantified, and included in the documentation of project benefits.'*

As a result, the Commission decided to impose a $64m reduction in operating expenditure to reflect savings across IT, procurement, and contract management, stating in relation to operating expenditure savings in the IT area that:[37]

> *'SA Water has stated its expectation that business savings driven by its IT investment over SAW RD20 will result in that investment being almost 'operating expenditure neutral'. However, SA Water's operating expenditure proposal did not appear to reflect the expected savings in full. …*

[35] Draft Determination, p. 284

[36] Draft Determination, p. 289, footnotes removed

[37] Draft Determination, p. 136

While the Commission's draft decision is to accept that the proposed operating expenditure is necessary to achieve the wider business efficiencies, it wants to ensure that the associated operating expenditure is transparently accounted for in the SAW RD20 period. Accordingly, it has made an adjustment to reduce the prudent and efficient operating expenditure benchmark of $22.3 million so that the expected savings are more easily identifiable than in SAW RD16, and thereby increase the level of accountability for efficient IT delivery in the future.'

SACOSS agrees with and supports the approach adopted by the Commission in the Draft Determination in relation to the allowed level of IT capital expenditure, and the decision to adjust allowed operating expenditure by $22.3m to reflect achievable savings in operating expenditure, arising from the IT capital expenditure program.

Approved operating expenditure

SA Water proposed operating expenditure for 2020-2024 of $1.852b. The capital expenditure was supported by a KPMG benchmarking study based on customer, length, and demand (CLD) metrics. The proposed base year efficient level of operating expenditure was $479m.

SACOSS noted in its submission to the regulatory proposal that SA Water presented few savings in underlying costs apart from lower energy costs due to the ZCEF project, some procurement contract savings, and a 0.5% ongoing efficiency dividend. SACOSS argued that there should be greater scope for operating expenditure savings especially given the IT expenditure program and technology improvements.

The Draft Determination was:[38]

- *$1,278 million ($Dec18) for drinking water retail services, …, and*
- *$525 million ($Dec18) for sewerage retail services.*

for a total of $1.803b.

The Draft Determination reduced the efficient base year level of operating expenditure from $479m to $458m reflecting further potential savings (1.5 per cent efficiency gap, electricity cost adjustments, vacancies, Allwater contract), and some additional (net) savings based on not continuing with the operating expenditure stapled to particular capital expenditure programs.[39] The Commission accepted the 0.5 per cent efficiency dividend proposed by SA Water and imposed a one-off $64m saving, including the $22.3m savings in operating expenditure stemming from the IT capital expenditure discussed in the section above.[40]

SACOSS accepts the position on operating expenditure in the Draft Determination. The savings appear reasonable, particularly as it is understood that the savings associated with

[38] Draft Determination, p. 98

[39] Draft Determination, p. 115

[40] Draft Determination, p. 134, table 7.6

the ZCEF have been excluded, with the effect that the savings in operating expenditure do not include operating expenditure savings stemming from the ZCEF.

Rate of return issues

The regulatory process sets the rate of return that SA Water is permitted to earn on its regulated asset base. As the rate of return that monopoly providers such as SA Water should be able to achieve cannot easily be observed from competitive market outcomes, the rate is set under a capital asset pricing model (CAPM) formula. The rate of return is intended to reflect the return that investors would need to make to induce them to invest in the SA Water business (or at least a business with a similar risk profile).[41] In the lead up to the regulatory proposal, the Commission published several guidance papers on matters including the rate of return.

In the regulatory proposal, SA Water proposed a rate of return of 4.17 per cent,[42] while in the Draft Determination, the Commission proposed a rate of 2.71 per cent.[43] The rate is made up of multiple elements under the CAPM formula. The variance between SA Water and the Commission was due to different values for three elements of the CAPM formula: (i) the equity beta used to measure the relative riskiness of the business to the market average; (ii) the averaging period for setting the risk-free rate; and (iii) the inflation rate forecast used to convert the nominal rate of return to a real rate of return. SACOSS' submission on the regulatory proposal set out views on these three CAPM elements.

The three areas of variance between SA Water and the Commission are set out in the table below.

Element	**SA Water**	**SACOSS submission**	**Commission**
Equity beta	0.7	0.6	0.65
Averaging period	60 days	20 days, proposed in Guidance paper 6	60 days
Inflation rate forecast	One-year RBA forecast; inflation estimate capped at inputted risk-free rate minus 0.15%	10-year average: one-year RBA forecast and mid-point of RBA inflation targeting band thereafter. (used in SAW RD16 and proposed in Guidance Paper 7)	10-year average: RBA forecast for 2 years; linear glide path to IMF medium-term projection of consumer price inflation in Australia; mid-point of RBA inflation targeting band thereafter.

[41] Draft Determination, p. 145

[42] Draft Determination, p. 142

[43] The final rate to be set depends on factors to be determined closer to the start of the regulatory period in July 2020, in particularly the prevailing risk-free rate.

SACOSS provides comments on each of these three elements below.

Equity beta

The equity beta measures systematic risk factors affecting a regulated business. In practice, the equity beta measures the relative riskiness of the regulated business compared to the market average.

SA Water proposed an equity beta of 0.7.[44]

SACOSS presented arguments in its submission in response to the regulatory proposal that a reasonable equity beta would be 0.6, reflecting the low risks of water businesses compared electricity and gas businesses, the revenue cap approach which insulates SA Water from volume-related risks, the adoption of annual resets of the cost of debt, and comparable equity betas for electricity and gas businesses presented by the AER.[45]

The Draft Determination proposes an equity beta of 0.65.[46]

The Commission stated that:[47]

> *'Guidance Paper 5 noted that the revenue cap form of regulation applied to SA Water, as opposed to the price cap form of regulation, may be a reason to think that beta for a monopoly water supplier would likely be lower than for an electricity distribution company. For those reasons a range from 0.6 to 0.7 was presented in Guidance Paper 5.'*

The Commission noted the protections in the regulatory arrangements including the demand adjustment mechanism made a 'prima facie case for lowering equity beta below 0.7'.[48] The Commission went on to state that:[49]

> *'Estimating the magnitude of the reduced level of risk is difficult. The Commission's draft decision of 0.65 recognises that a reduction to 0.65 is the mid-point of the range of most estimates used by regulators in Australia (Table 8.4).'*

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[44] SA Water Our Plan, Appendix E, p. 2

[45] SACOSS submission to regulatory proposal, pp. 25-26

[46] Draft Determination, p. 157

[47] Draft Determination, p. 157 footnotes omitted

[48] Draft Determination, p. 157

[49] Draft Determination, pp. 157-158

Table 8.4: Equity beta decisions across jurisdictions, adjusted for gearing assumptions

Regulator	Equity β in latest guidance
ESCOSA	0.60-0.70
IPART	0.70
ERA	0.77 (energy)
AER	0.60 (energy)
ESCV	0.65
OTTER	0.65
ICRC	0.70
QCA	0.65
Average	**0.68**

SACOSS agrees with the Commission's view that equity betas for water businesses would be likely to be below those of electricity distribution companies, more particularly due to the disruptions in the electricity industry which have flattened the upward trajectory of demand in electricity since 2010 or so. From table 8.4, the latest AER equity beta is 0.6 for energy businesses, suggesting an equity beta for water businesses under 0.6. The AER work has been well supported by extensive industry studies. This would suggest an equity beta of no more than 0.6 for SA Water. SACOSS would also reiterate the reasons stated in its submission on the regulatory proposal for an equity beta of 0.6, namely that it sits closer to the midpoint of the range of equity betas observed in regulated industries in the Henry report and later updates.[50]

Averaging period

SA Water is proposing a 60 day averaging period for determining the risk-free rate as an input to the rate of return.

The Commission has previously used a 20 day average period for the two previous regulatory periods.[51] However, the Draft Determination proposes an averaging period of 60 days.

The Commission released two Guidance Papers on this issue, guidance paper 5 (G5) and guidance paper 7 (G7).

G5 notes that SA Water is interested in proposing a longer period and states:[52]

> *'SA Water have proposed changing part of the calculation of the cost of equity. The reasons why SA Water is proposing the change are primarily for price stability, but there may be unintended consequences if this change were to be introduced. The technical details of this are discussed in Appendix 1.*

[50] SACOSS submission to regulatory proposal, pp. 25-26

[51] Guidance paper 5, p. 6

[52] Guidance paper 5, p. 6

Noting those matters, the Commission nevertheless remains open to further consideration of this issue and invites SA Water to make the case for a trailing average cost of equity in its draft business proposal. The Commission expects any proposal by SA Water for a long-term cost of equity to be supported by:

- *evidence that customers prefer long-term price stability*
- *analysis to show that adopting a long-term cost of equity is the best way to reduce price volatility, and*
- *information about the long-term impacts on revenues and prices of adopting that approach, relative to using the prevailing Risk Free Rate.'*

SACOSS noted in its submission on SA Water's regulatory proposal that SA Water has 'only addressed these requirements to a very limited extent in one page of its submission (page 3 of Appendix E)'.[53] The submission also quoted the Customer Negotiation Committee to the effect that it did not agree that customers universally preferred long-term price stability, for example when that implied a price rise.[54] In essence, the argument raised by the Customer Negotiation Committee is:

- Suppose efficient prices move in a range.
- To achieve price stability would involve setting prices at the highest likely value within the price range.
- Would customers prefer to pay this higher set price or would they prefer for prices to vary in the range and pay the prevailing price.

SACOSS argues that there was no evidence that customers preferred the fixed high price to the varying price in those circumstances, and that SA Water has not met the requirement in G5 to establish that customers would prefer this approach.

G7 presents research on different averaging periods used in determining the risk-free rate. G7 found that with very long averaging periods such as 10 years there were significant errors in forecasting the risk-free rate, but that the average error between using short period such as on the day, 5 day, 20 day, and 60 day period was immaterial.[55] The paper noted that a 10 year period captured 'outdated information about risk aversion'.[56] The G7 stated that 'there is likely to be limited additional forecasting accuracy to be gained from using a shorter (five) or longer (sixty) day average [than a 20 day period]'.[57]

SACOSS' submission to the regulatory proposal argued that it:[58]

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[53] SACOSS submission to regulatory proposal, p. 27

[54] SACOSS submission on regulatory proposal, p. 27

[55] Guidance paper 7, pp. 8-9

[56] Guidance paper 7, p. 9

[57] Guidance paper 7, p. 7

[58] SACOSS submission on regulatory proposal, p. 27

'… sees the logic of applying a mechanistic approach for selecting the risk-free rate such as a fixed 20 day period. This reduces the potential for gaming and best reflects the risk free rate that prevails at the start of the regulatory period.'

In responding to the Draft Determination, SACOSS reiterates its concerns that:

- SA Water has not addressed the requirement in G5 for it to demonstrate that customers prefer long-term price stability in order to justify a move from a 20 day averaging period to a longer averaging period.
- A longer term averaging period increases the potential for the risk-free rate to be different to the rate that prevails over the first year of the regulatory period.
- Allowing the choice of a longer averaging period provides some potential for gaming.[59]

In the Draft Determination, the Commission stated that:[60]

'SACOSS argued against the use of a 60-day averaging period, noting that SA Water may select an averaging period that is most favourable to it. The Commission notes that the risk of any 'gaming' of the averaging period is low. It is inherently difficult to predict the outlook for bond yields and the nomination of the averaging period occurred in November 2019, more than six months from the commencement of the regulatory period.'

In relation to the potential for gaming, SACOSS argues that:

- Allowing a longer averaging period such as 60 days provides more scope for gaming by the regulated firm.
- The 'game' involves forecasting the trend of rates at the start of the regulatory period, and then arguing for a longer period to capture higher rates at the start of the period which do not reflect the prevailing rate during the first year of the regulatory period (i.e. 2020-21).
- The 60 day period selected for the 2020-21 year are the 60 days leading up to 24 April 2020.[61] The 24 April is both well in advance of the 2020-21 period and much nearer to the time at which the regulatory proposal was submitted (November 2019), making forecasting easier.
- Counting back 60 days from 24 April 202, the 60 days under the Draft Determination start in late January 2020, not long after the regulatory proposal's submission.
- The 60 days include two 25 basis points rates cuts, one on 4 March 2020 of 25 basis points, and a second on 20 March of 25 basis points, for a total of 50 basis points.[62]

[59] The terms 'game' and 'gaming' are not used in a pejorative sense

[60] Draft Determination, p. 155 footnotes omitted

[61] See Draft Determination at p. 154: "…the draft decision is to calculate the 60-day average for the risk-free rate to be used in the final determination as the 60 business days up to and including 24 April 2020".

[62] See Reserve Bank of Australia website at https://www.rba.gov.au/statistics/cash-rate/

Both of these rate cuts were signaled by the RBA in 2019. For example, in its November monetary policy statement, the RBA mooted an interest rate and decided against it but stated that: *'…spare capacity remains in the Australian economy, and inflation is below the medium-term target band. Wages growth is also low, and it is increasingly clear that lower unemployment is needed to generate wages growth that is consistent with sustainably achieving the inflation target. These considerations pointed to a case for further easing….. the Board is prepared to ease monetary policy further if needed to support sustainable growth in the economy, full employment and the achievement of the medium-term inflation target over time'.*[63]

- Near term rates cuts are reasonably predictable. For example, economists in November 2019 predicted that interest rates would be cut to 0.25 per cent (as they have been) by mid-2020.[64]
- There are few good reasons to prefer a 60 day averaging period, especially since a 20 day period has generally been accepted in the past without an observed stifling of investment in regulated assets. In fact, during the 2016-20 SA Water invested considerably in excess of the allowed capital program.
- Forward-looking investors would not require the historical 50 basis points included in the 60 day averaging period to induce them to invest in SA Water assets.
- The uplift in the interest rate due to the longer averaging period applies for one year (2020-21), and does not reflect the interest rate prevailing during 2020-21.
- The uplift in the interest rate puts pressure on the budgets of SA water and sewerage consumers.

SACOSS continues to recommend the Commission apply a shorter fixed averaging period of 20 days.

Inflation estimates

Inflation forecasts are used to convert nominal rates of return to real rates of return since the weighted average cost of capital is based on real rates of return.[65]

SA Water proposed using the one-year RBA forecast for 2020-21 and then an inflation estimate capped at the inputted risk-free rate minus 0.15%.[66]

Guidance paper 6 canvassed various options and concluded that '[e]xisting research and the Commission's review of other regulators' practices supports the Commission's current method'. The Commission's current method is to use the Reserve Bank of Australia forecast 'for the upcoming year and then assuming inflation expectations of 2.5 per cent thereafter

[63] RBA November 2019 Monetary Policy Statement, Overview, at https://www.rba.gov.au/publications/smp/2019/nov/overview.html

[64] https://www.theguardian.com/australia-news/2019/nov/13/reserve-bank-tipped-to-cut-interest-rates-to-025-as-retailers-predict-grim-christmas

[65] Guidance paper 6, p. 4

[66] Draft Determination, p. 142

(based on the mid-point of the RBA's inflation target band)'.[67] G6 stated that the Commission was nonetheless open to other approaches.

In evaluating SA Water's proposal, the Commission rejected the idea of using a nominal approach or an ex post approach in determining the forecast inflation rate. It did, however, accept the current soft economic conditions which were depressing inflation forecasts and the uncertainty around the speed with which the economy will return to more normal conditions.

Accordingly, the Commission adjusted its conventional approach of predicting inflation over the next ten years by:

- For year two (2021-22), adopting the RBA's forecast of 2.0 per cent in place of an estimate of 2.5.
- For years three and four, 'using the IMF medium-term inflation projection and assuming a linear transition from the RBA second-year forecast to the IMF projection for inflation in five years' time'.[68] This resulted in an inflation forecast in year 3 of 2.17, in year 4 of 2.33, and then in years 5-10 of 2.5.[69]

The Draft Determination reduces the inflation forecasts in effect for years 2, 3, and 4 from 2.5 to 2.0, 2.17, and 2.33 respectively.

SACOSS accepts the Draft Determination. This should leave open the door to regulators accepting upward adjustments in inflation forecasts in future times.

Delivery of water in remote areas

In the context of proposals to spend money to improve services in regional areas, the report by the Independent Chair of the Customer Negotiation Committee called for a review of where SA Water has an obligation to supply.

The Draft Determination agrees that regional supply and the obligation to supply are matters of South Australian Government policy. The Draft Determination went on to state that:[70]

> *'The Commission will liaise, where appropriate, with the South Australian Government to help inform policy development regarding SA Water's obligation to supply, and where and how potable water supplies are provided and funded. If required, in order to be consistent with South Australian Government policy, the Commission will reconsider expenditure proposals for upgrading non-potable supplies during SAW RD20, using the contingent project review mechanism described in Chapter 4.'*

[67] Guidance paper 6, p. 8

[68] Draft Determination, p. 162

[69] Draft Determination, p. 163, Table 8.5

[70] Draft Determination, p. 130 and compare Draft Determination, p. 265

SACOSS supports the Commission's Draft Determination, and refers the Commission to our additional comments on SA Water's Regional Water Quality proposal, above.

Future consumer engagement processes

The Independent Chair of the Customer Negotiation Committee called for consumer engagement processes to engage with customers from the outset of the development of regulatory proposal.[71] This view was echoed by the independent probity auditor.[72] There was a sense in the comments of the Independent Chair that SA Water chose preferred capital spending projects and consulted on them at the point at which they had been developed into firm plans.[73] The Independent Chair also noted that much of the detail of the regulatory proposal was presented late in the process to customers.[74]

The Commission acknowledged 'that SA Water's engagement practices in developing the [regulatory proposal] represent an important and material improvement on past practices'[75] and commented that:[76]

> *'The process to date has identified a range of areas where either regulatory process or methodology may benefit from further review after the SAW RD20 Final Determination is made. Those include the need for:*
>
> - *greater clarity around the role, and best way to incorporate, diverse stakeholder feedback into the Commission's regulatory determination process and SA Water's long-term business planning processes*
> - *greater clarity around the longer-term challenges SA Water is facing and the opportunity for it to consider more collaborative, cooperative and community-based methods for defining the issues that need to be solved and then develop cost-effective solutions to address those problems*
> - *SA Water to provide more information publicly to allow stakeholders to better understand the aggregate impact of the expenditure proposed—with a clearer articulation of the factors that SA Water can control from the changes in the cost of financing its investments (over which is has less control)—to allow a wide group of stakeholders to be able to more effectively comment on the investment prioritisation process*
> - *various refinements to SA Water's asset management system to:*
>   - *achieve greater alignment between stakeholder expectations and asset management objectives, to ensure the need for, and expected outcomes from, expenditure are clear*

[71] Customer Negotiation Committee, Report of Independent Chair, p. 4

[72] Probity report (Gaby Jaksa), p. 6

[73] Customer Negotiation Committee, Report of Independent Chair, pp. 5, 86, 90

[74] Customer Negotiation Committee, Report of Independent Chair, p. 5

[75] Draft Determination, p. 6

[76] Draft Determination, p. 195

- *achieve greater consistency of approach between asset classes to provide greater assurance that medium and long-term asset management planning and decision making considers the impact of reprioritisations across the entire asset portfolio*
- *more closely monitor the benefits of expenditure realised over time, to establish a clearer understanding of the relationship between expenditure and its intended performance outcomes As noted in Chapter 2, the Commission intends to conduct such a review, in an open and transparent form, and any relevant lessons learned form that process will inform the methodology for SAW RD24.'*

The Commission also noted the comments by Cardno that critiqued 'the methodology used in this work and found that the link between the customer engagement and the resulting corporate strategy was not clear in some instances.'[77]

The Draft Determination was that:[78]

> *'Stakeholders have generally supported the new determination process to date, although areas for improvement have already been identified, including that:*
>
> - *the customer challenge process should occur over a longer period of time*
> - *SA Water could consult earlier and more extensively with the community on the development of its new initiatives*
> - *there may be opportunities to better integrate SA Water's plans with the plans of other industry participants, and*
> - *greater transparency about SA Water's plans, including its long-term plans, would allow for more effective community engagement.*
>
> *The Commission will commence a full review of the new process later in 2020 and will consider issues raised to date and any other issues that are raised by stakeholders, in considering the process for the next SA Water Regulatory Determination in 2024.'*

SACOSS supports the Draft Determination. It will be valuable to SA Water and the Commission for customers to be involved in the early development of capital projects.

Water Retail Code - Major Retailers

SACOSS supports the Commission's Draft Decision to make the following variations to the Water Retail Code (the Code):[79]

[77] Draft Determination, p. 67

[78] Draft Determination, p. 7

[79] Draft Determination, p.47

- *Replace references to ‘tenants’ with references to ‘consumers’ in order to improve consistency with the WI Act and the regulations under that Act.*

- *Allow bills, notices and other documents to be issued using each customer’s preferred form of communication, with the default remaining hard copy documents sent to the supply address with no specific charge for that service.*

- *Allow information about planned interruptions to be provided using a wider range of communication modes (such as SMS, websites, internet apps, and social media).*

- *Require bills, notices and other documents to be in a format that can be easily read and understood by customers, and to require bills, notices and other documents to be provided in alternative formats for customers with specific needs (for example, needs related to disability).*

- *Remove the obligation for SA Water to include a comparison of water usage with other similar customers on residential bills (noting that SA Water may still choose to provide appropriate comparative information).*

- *Allow meter readings taken by customers to be accepted as actual meter readings where SA Water considers they are accurate, further reducing uncertainty about potential future bill adjustments.*

- *Reduce the time limitation on SA Water recovering any amount it undercharges (unless the customer is at fault) from 12 months to nine months.*

SACOSS particularly welcomes the new accessible communication provisions and commends the Commission on consulting with JFA Purple Orange in the drafting of those provisions. SACOSS also supports the Commission in urging SA Water to adopt a family violence policy similar to that required of Victorian water businesses.

SACOSS is seeking the Commission consider the following matters in its final decision on the Water Retail Code:

Aligning definition of ‘residential customer’ with the Water Industry Act

Whilst we welcome aligning the definitions of ‘customer’ and ‘consumer’ (tenant) in the Code with the Water Industry Act 2012, we consider the definition of ‘residential customer’ in section 37(5) of the Act should also be included in the Code.

Currently, the Code defines ‘residential customer’ to mean:

> *‘residential customer means a customer which acquires retail services primarily for domestic purposes’*

Section 37 of the Water Industry Act deals with customer hardship policies, and section 37(5) of the Act extends the application of those policies to consumers (tenants):

> *'Section 37 (5) In this section—* ***residential customer*** *means a* ***customer or consumer*** *who is supplied with retail services for use at residential premises.'*

SACOSS acknowledges the Commission's Draft Decision that:[80]

> *'Given that the South Australian Government is currently undertaking a review of the WI Act's payment difficulty and hardship provisions, and that the review may give rise to statutory amendments, the Commission will postpone its response to Code-related issues on those matters until that review is finalised.'*

We therefore understand aligning the definition of 'residential customer' with section 37(5) may have been excluded due to the Water Industry Act review, however it is unclear how long the review process will take and we consider it is of vital importance to the application of hardship supports and associated protections that the definition is acknowledged and included in the Code at this time.

There is currently a misapprehension amongst stakeholders that hardship supports and associated protections (including protections from restriction) are not available for consumers / tenants. To avoid confusion and for the sake of clarity and consistency, we consider that while the Code continues to refer to 'residential customers' in bold (as a defined term) in the following clauses, then that term should be clearly defined **in line with the Water Industry Act** to include consumers:

- Clause 6 dealing with water efficiency advice
- Clause 8 dealing with concessions, rebates or grants
- Clause 9 dealing with Life Support Equipment
- Clause 10 dealing with Hardship Policies
- Clause 18.7.2(m) dealing with billing
- Clause 18.8 dealing with average daily use
- Clause 23.2 dealing with Centrepay
- Clause 23.5 dealing with Long absence or illness
- Clause 23.6 dealing with shortened collection period
- Clause 24.2 dealing with Debt Recovery
- Clause 25 dealing with Payment difficulties and flexible payment plans
- Clause 26.2 dealing with prohibitions on water service flow restriction,
- Clause 26.3 dealing with ability to restrict water services
- Clause 26.4 dealing with preconditions to restricting water services
- Clause 28.2 dealing with waiver of reconnection fee for Hardship Customer

[80] Draft Determination, p.55

To do otherwise would be to fail to comply with the intent of the legislation as it stands, which is clearly to extend the application of hardship supports and associated protections to consumers / tenants.

Extending the application of additional Code provisions to consumers

SACOSS is seeking the Commission consider whether there is any legislative barrier to including additional references to 'consumers' within the code. This would extend the operation of certain obligations under the code to tenants.

SACOSS acknowledges the Commission's Draft Decision that:[81]

> *'The Code currently extends some provisions to 'tenants' because the WI Act definition of 'customer' is extended to include 'other consumers' in some prescribed circumstances (as detailed in Regulation 4 of the Water Industry Regulations 2012). These prescribed circumstances include dispute resolution, disconnections, and the industry ombudsman scheme.'*

Clause 18.11 of the Code which deals with 'Historical Billing data' already refers to consumers. This clause falls under clause 18 which deals with 'Billing' and arguably doesn't fall under the prescribed circumstances of '*dispute resolution, disconnections, and the industry ombudsman scheme*'. We note additional commentary on Clause 18.11 in the Draft Decision:[82]

> *The word 'reside' limits the application of this clause to consumers at residential addressed. The definition of consumer in section 4 of the WI Act and the extension of the definition of customer to include consumers in WI Regulation 4 (a)-(c) for disconnections, dispute resolution and ombudsman schemes does not limit this term to only residential consumers.*

SA Water has long said it would like a direct billing relationship with tenants, but is precluded due to Code / legislative provisions. To our knowledge, the Water Industry Act and the Water Industry Regulations do not specifically provide for billing requirements,[83] whereas the Water Retail Code does.

As outlined in the Commission's Draft Decision:[84]

> *'The Code sets out the behavioural standards and minimum requirements that apply to SA Water for the sale and supply of retail services (water and sewerage) to customers*

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[81] Draft Determination, p. 49

[82] Draft Determination, p.63

[83] Section 40(4)(b) of the Water Industry Act which deals with Ministerial Directions makes the following reference to billing: '(*b) any matter relevant to billing customers in relation to the supply of water under a retail service where a water meter is not available to be used to determine the quantity of water supplied;'*

[84] Draft Determination, p.48

and, in some instances, other consumers. Its obligations include the requirements for SA Water to (inter alia):

- *meet minimum billing requirements to ensure that customers receive accurate billing information in a timely manner, and make provision to resolve billing errors, undercharging and overcharging'*

We are therefore seeking the Commission examine whether there is scope within the Code to apply certain provisions to both 'customers and consumers' (including billing provisions) to enable SA Water to have a direct billing relationship with tenants. Given 'historical billing' provisions already apply to consumer / tenants, we are seeking an explanation as to whether there are any barriers preventing additional Code billing provisions from applying to consumers. We strongly support SA Water being permitted to have a direct billing relationship with consumers under the Code.

Timing of Water Industry Act Review

As referred to above, we understand ESCOSA is waiting until the review and possible amendments to the Water Industry Act have been passed prior to making any changes to the payment difficulty and hardship provisions under the Code.

SACOSS is seeking more information on the timing and process involved for stakeholders to provide input into proposed amendments to Water Industry Act as well as the future amendments to the payment difficulty and hardship provisions in the Code. We are concerned to ensure that any amendments to section 37 dealing with hardship policies do not preclude tenants from accessing those supports as is currently permitted under the Act.

Also, given the current COVD-19 crisis, there may understandably be delays in making amendments to legislation. Given this, and the significant adverse effects of the crisis on vulnerable consumers and in particular tenants, we are seeking that the existing protections for 'residential customers' (which include consumer / tenants) under the Code are affirmed up until the amendments to the Act are passed.