

External post-project review

STAKEHOLDERS VIEWS REGARDING THE PROCESS APPLIED TO THE SA WATER REGULATORY DETERMINATION 2020

REPORT

October 2020

Table of contents

Glossary of terms	ii
Preface.....	1
Executive Summary	2
1 Introduction	4
2 The Process.....	7
3 Negotiation Forum	16
3.1 Independent Probity Adviser	16
3.2 SA Water.....	17
3.3 Customer Negotiation Committee.....	20
3.4 Other Stakeholders.....	23
4 Communication and Timing.....	24
4.1 Communication	24
4.2 Timing.....	26
5 Consumer Engagement	28
5.1 Consumer Experts Panel.....	28
5.2 SA Water’s Customer Engagement	31
6 Rate of Return	35
7 Regulatory Co-ordination	38
8 Role of Government	40
9 The RD24 Process.....	43
9.1 Stakeholder Views.....	43
9.2 Synthesis.....	48

Glossary of terms

AER	Australian Energy Regulator
CCP	Consumer Challenge Panel established by the AER
CEP	Consumer Experts Panel
CEP report	Priorities report to SA Water and the CNC by the CEP
CNC	Customer Negotiation Committee
CNC report	Report to the Commission by the Independent Chair of the CNC
Commission	Essential Services Commission, established under the Essential Services Commission Act 2002
DEW	Department of Environment & Water
DHW	Department of Health & Wellbeing
EPA	Environmental Protection Authority
IPA	Independent Probity Advisor
IPA report	Report to the Commission by the IPA
Negotiation Forum	Comprising the CNC, SAWNT, and IPA, with the role of ensuring that the RBP submitted by SA Water to the Commission had been thoroughly tested by consumer representatives.
OTR	Office of the Technical Regulator
RBP	Regulatory Business Proposal
RD13	SA Water regulatory determination made 2013
RD16	SA Water regulatory determination made 2016
RD20	SA Water regulatory determination made 2020
RD24	SA Water regulatory determination to be made 2024
RWG	Regulators Working Group
SACOSS	SA Council of Social Services
SAWNT	SA Water Negotiation Team

Preface

This report presents the results of work undertaken between August and October 2020 in assessing the views of stakeholders regarding the process used in the making of the SA Water Regulatory Determination conducted by the Essential Services Commission of SA which took effect from July 2020 and applies until June 2024. Those stakeholders included SA Water, consumer representatives, other bodies regulating aspects of SA Water's operations, and the State Government.

I thank all stakeholders who willingly gave of their time in participating in this review, which will assist the Commission in establishing the framework and approach to be applied in the making of the next regulatory determination for SA Water, to apply from July 2024. I thank Commission staff and Commissioners for the assistance given to me in the conduct of this work. In particular, Anita Allen played a vital role in the scheduling and conduct of stakeholder meetings and in the formatting of this report.

I have been concerned in this report to provide as accurate a portrayal of stakeholder views as is possible. The principal means of ascertaining such views has been through interview of stakeholders. In several cases accuracy has been enhanced through the provision to me of written submissions from stakeholders. I have also made follow-up contact with stakeholders as necessary to clarify specific points and hence to reduce the risk of misrepresentation of the views of those stakeholders.

It has not been my role to form judgements as to the correctness or relevance of the views expressed to me by stakeholders regarding the process underlying the 2020 SA Water Regulatory Determination, and I have not done so. The diversity of stakeholder views expressed in this report emphasises the complexity of the task facing the Commission as it seeks to provide consumers with a more prominent voice in the regulatory determination process.

Patrick Walsh

October 2020

Executive Summary

In June 2020, the Essential Services Commission of SA made a regulatory determination (RD20) to apply to SA Water for the four year period beginning 1 July 2020. RD20 set revenue caps for drinking water retail services and sewerage retail services supplied by SA Water to its customers, and pricing principles to be applied to excluded retail services. It also established service standards and other customer service obligations that SA Water must meet during the four year regulatory period.

An independent review has been undertaken into the views of stakeholders regarding the process used in the making of RD20. The review will assist the Commission in establishing the framework and approach to be applied to the making of the next regulatory determination for SA Water, due in June 2024.

It was the Commission's intent that customers be more centrally involved in RD20 than in previous regulatory determinations for SA Water.

Key features of the process as settled by the Commission in July 2018 included a Negotiation Forum which would enable a three person Customer Negotiation Committee (with an Independent Chair) to directly challenge and negotiate with SA Water as it developed its regulatory business proposal for consideration by the Commission; an Independent Probity Adviser to oversight the Negotiation Forum; a representative Consumer Experts Panel to provide advice on consumer priorities to both SA Water and the Customer Negotiation Committee; and a working group of technical, environmental and health regulators to co-ordinate regulatory input to the RD20 process. It also included early publication by the Commission of a series of Guidance papers concerning matters of methodology and expectations, to assist the negotiation process.

The review has confirmed that there is strong support amongst stakeholders for customer preferences and priorities to be at the centre of both SA Water's planning processes and the regulatory determination process. The RD20 process was an important step in that direction and provided a robust consumer-focused review of SA Water's regulatory business proposal, the output of which was expressed in a report to the Commission from the Customer Negotiation Committee.

Stakeholders generally believed that insufficient time and resources had been available for the Customer Negotiation Committee to fully discharge its role, and that genuine negotiation with SA Water did not occur. Greater clarity was needed about the expected outcomes from the Negotiation Forum process. The Consumer Experts Panel also operated under time pressures in the development of its advice.

From the perspective of SA Water, the advent of the Negotiation Forum represented a significant change in the intended process for RD20, and impacted the quality of direct dialogue between it and the Commission. Several stakeholders suggested that SA Water's long term planning processes and its regulatory business proposals needed to more clearly reflect customer priorities.

Stakeholders noted the significant role of Government in the RD20 process, particularly through ministerial directions to the Commission and SA Water, and stressed the importance of alignment between the Commission, SA Water, SA Water's customers (through a representative body) and the Government concerning the extent of customer involvement in future SA Water regulatory determinations.

In reflecting on the process for future determinations, stakeholders suggested that the regulatory determination process needed to be ongoing, consistent with SA Water's planning processes. For a specific determination, the process should commence as early as possible in the regulatory period. The framework for SA Water's customer engagement activities should be agreed with the Commission at the outset, and matters such as rate of return methodology and service standards should be reviewed and finalised by the Commission through a consultative process as early as possible in the regulatory period. The framework for a customer challenge or negotiation forum should also be agreed at a very early stage, and it should be well resourced.

1 Introduction

In June 2020, the Essential Services Commission of SA (**Commission**) made a regulatory determination to apply to SA Water for the regulatory period July 2020 to June 2024 (**RD20**); this determination was made by the Commission pursuant to relevant provisions of the Essential Services Commission Act 2002 and the Water Industry Act 2012.

RD20 included a price determination that sets four year revenue caps for drinking water retail services and sewerage retail services, and specified pricing principles for excluded retail services. It also established service standards and other customer service obligations that SA Water must meet during the four year regulatory period. Information about RD20, including draft and final determinations, stakeholder submissions, and other relevant documentation is available from the Commission's website.

The making of RD20 was the culmination of a process spanning several years. That process involved extensive consultation with RD20 stakeholders, including SA Water, consumer representatives, bodies that regulate aspects of SA Water's operations, and the State Government. This report documents the views of stakeholders regarding that process. It will inform the Commission's deliberations regarding the framework and approach to be applied to the making of the next regulatory determination for SA Water, to apply from July 2024 (**RD24**).

It is important to stress that this report does not consider the outcomes and merits of RD20; the determination is now being implemented. Neither does it seek to make recommendations about the process to be applied to the making of RD24; that is a matter for the Commission. The focus of this report is on the identification of stakeholder views regarding the processes underlying the making of RD20 and opportunities for improving those processes. It is of course the case that stakeholder views regarding the adequacy or otherwise of processes may be influenced by their views regarding the outcomes and merits of RD20.

The assessment of stakeholder views as reported here was undertaken between August and October 2020. Stakeholder views were assessed through a combination of methods, including direct interview (the principal method), receipt of written submissions from some stakeholders, and scrutiny of reports prepared by stakeholders as part of the regulatory process itself. A brief discussion paper was prepared at the outset of this work to provide a common reference point for discussion with stakeholders about the process used in the making of RD20. Clarification of discussion in interviews was pursued as necessary through follow-up email contact.

With the consent of the organisations or individuals that made written submissions, all such submissions are being provided to the Commission with this report.

Table 1 provides a list of stakeholder interviews conducted during this period and also indicates those parties that made written submissions.

Table 1. Stakeholder interviews conducted August-September 2020;
* indicates written submission also received

Organisation	Names	Date	Meeting Format
SA Water*	David Ryan	10 Aug 1 Sep	In person
	Anne Westley ¹ Richard Cawley Peter Seltsikas Natalie Caon Courtney Rogers Claire Pullan Matt Bonnett	28 Aug	In person
	Anne Westley Richard Cawley	7 Oct	In person
SACOSS*	Ross Womersley Georgina Morris	24 Aug	Virtual
	Georgina Morris	13 Oct	Phone
Customer Negotiation Committee	John Hill	11 Aug	In person
		16 Oct	Phone
	John Hill* Mark Henley Meg Clarke	28 Aug	Virtual
Consumer Advisory Committee ²	Mark Henley*: <i>Uniting Communities</i> Sandy Canale: <i>EWOSA</i> Heather Smith*: <i>Conservation Council</i> Elaine Attwood: <i>Consumers SA</i> Andrew McKenna: <i>Business SA</i>	31 Aug	Virtual
Independent Probity Advisor	Gaby Jaksa	7 Sep	Virtual
Regulators Working Group	Shaun Thomas: <i>EPA</i> Hannah Ellyard: <i>DEW</i> David Cunliffe: <i>DHW</i> Rob Faunt: <i>OTR</i> Naomi Struve: <i>OTR</i>	8 Sep	Virtual

¹ Anne Westley was a member of SA Water's Negotiation Team for RD20.

² Members of the Commission's Consumer Advisory Committee, all of whom were members of the Consumer Experts Panel formed specifically for the purpose of RD20. Mark Henley was also a member of the Customer Negotiation Committee. SACOSS (Ross Womersley) is also a member of the Consumer Advisory Committee and hence also of the Consumer Experts Panel.

Consumer Experts Panel ³	Glen Hordacre: <i>Urban Dev. Instit. Of Aust.</i> Helena Kyriazopoulos: <i>Multicultural Comm. Council</i> Neville Sloss: <i>Primary Producers Assoc.</i> Kay Matthias: <i>Regional Comm. Consul. Council</i> Lea Bacon: <i>Local Govt. Assoc.</i> Kevin Kaeding: <i>SA Fed. Of Residents & Ratepayers</i>	10 Sep	Virtual
Department of Treasury and Finance	Stuart Hocking	15 Sep	In person
Individual	Jamie Hollamby ⁴	22 Sep	Virtual

In addition, discussions were held with Commission staff and all Commissioners to provide further background to the RD20 process. The content of those discussions is not reflected in this report.

Section 2 of this report details the scope of the RD20 process; this review has taken a broad view as to the activities that form part of the process, consistent with comments from several stakeholders. The remaining sections present stakeholder comments structured according to certain key themes that arose either during stakeholder interviews or from written submissions.

³ Members of the Consumer Experts Panel who were not members of the Consumer Advisory Committee, instead drawn from SA Water's Customer Advisory Groups.

⁴ Jamie Hollamby was General Manager, Business Services at SA from 2013 to July 2020, at which point he joined Sydney Water as General Manager, Finance and Business Performance. He was closely involved in the SA Water regulatory determinations of 2016 and 2020, and was interviewed for this report with the agreement of SA Water; the views he expressed are his personal views and not those of SA Water.

2 The Process

It is important at the outset of this report to be clear about the scope of the process on which stakeholder comment has been sought.

Clearly that process involves activities undertaken by the Commission, including governance arrangements established by the Commission to support those activities⁵. However, it also involves activities of SA Water (eg its stakeholder engagement processes, preparation of regulatory proposal, etc), and activities of other regulatory bodies (eg, health, environmental) to the extent that they impact on the Commission's regulatory determination for SA Water.

Importantly the process also includes certain activities of the State Government, again to the extent that they impact on the Commission's determination. The Government is the owner of the statutory corporation, SA Water, and also makes and implements policy in the water sector and in economic regulation. Of particular relevance are powers to issue ministerial directions (eg to undertake certain works) to SA Water pursuant to section 6 of the Public Corporations Act 1993; or for the Treasurer to issue pricing orders to the Commission pursuant to s. 35(4) of the Water Industry Act 2012. A Government activity which impacted RD20 was an independent review commissioned by the Government in 2018, and completed by mid-2019, into the appropriate valuation of the assets of SA Water that are used in the provision of drinking water retail services.

RD20 was the third such price determination made by the Commission for SA Water. The first (**RD13**), made in 2013, was for a regulatory period of 3 years, while the second (**RD16**) and third determinations were each for regulatory periods of four years⁶. The Commission makes its periodic regulatory determinations against the background of SA Water's ongoing planning and operational processes, many of which have a long-term focus. It is axiomatic that the two sets of processes should be complementary as far as possible. This theme will be revisited in later sections of this report when discussing stakeholder comments, but for the time being it is sufficient to note that the regulatory determination process must also be considered ongoing. Thus the RD20 process should be viewed in the context of its two predecessors and should be considered to have commenced at the beginning of the regulatory period in which it was made, ie July 2016.

The Commission engaged in a consultative process through 2017 and the first half of 2018 in seeking to establish the framework and approach that it would apply in the making of RD20. A draft Framework and Approach paper was released for public comment in November 2017, and following consideration of submissions, a final Framework and Approach paper was released in July 2018.

It was the Commission's intention that, in comparison with RD13 and RD16, the process underlying RD20 would raise issues for consideration earlier and would involve a greater level of direct customer testing and negotiation in the preparation of SA Water's regulatory business proposal (**RBP**) for the 2020-2024 period. That proposal would set out the customer

⁵ Those governance arrangements will be detailed later in this section.

⁶ The length of the regulatory period for each determination has been established by the Treasurer under a pricing order issued pursuant to the Water Industry Act 2012.

service levels and revenues that SA Water intended to recover from its drinking water and sewerage customers over the four years from 1 July 2020.

Traditionally, such determinations have involved the regulated business submitting its RBP to the economic regulator for consideration; stakeholder comment is sought by the regulator on the RBP, following which a draft determination is released for further stakeholder comment prior to the release of a final determination. The RBP may have been prepared by the regulated business with relatively little involvement of the customers of the regulated business, so that opportunities for such involvement are limited to commenting to the Commission on the RBP or on the Commission's draft determination. The output of the final determination is an approved RBP for the regulated business.

The Commission signalled in the Framework and Approach paper of July 2018 that the proposed enhancements to the review process for RD20 were seeking to address several challenges inherent in RD13 and RD16,⁷ including large information asymmetries between SA Water, the Commission and other stakeholders; the limited involvement of customers in the decision-making process; and the lack of sufficient time to resolve issues identified in SA Water's RBP once developed.

The Commission's desire to increase customer involvement in the process associated with RD20 was consistent with a national and international trend in economic regulation over the past decade. Greater customer involvement can provide more certainty that regulatory objectives (summarised as customers' long term interests), business objectives and customer objectives are appropriately aligned. Various models for customer involvement are now available for possible application in the South Australian water sector.

For example, the Australian Energy Regulator (AER) established a Customer Challenge Panel (CCP) in 2013 to advise it on whether energy network businesses proposals are justified in terms of the services to be delivered to customers and whether those proposals are in the long term interests of consumers. The CCP would also advise the AER on the extent to which those businesses had been engaging with customers in developing their regulatory proposals.⁸

The Essential Services Commission of Victoria has developed the PREMO water pricing framework in reviewing proposals from Victorian water businesses.⁹ This scheme incentivises the water businesses to engage effectively with, and deliver better value for, their customers in the development of their business proposals.

Relevant models are also available from the United Kingdom. For example, the water regulator for England and Wales, Ofwat, has established Customer Challenge Panels which provide independent assurance to the regulator on the quality of each water company's customer engagement and the extent to which this is reflected in the company's business proposal. In

⁷ It is noteworthy that the RD16 process did place an explicit requirement on SA Water to engage with customers in the development of its RBP, whereas the process for RD13 imposed no such explicit requirement on SA Water.

⁸ Refer the AER's CCP fact sheet, available at aer.gov.au. In 2019, the AER commissioned a review of the CCP arrangements; the report of this review is available at <https://www.aer.gov.au/communication/independent-review-supports-aer-establishing-next-consumer-challenge-panel>.

⁹ Refer esc.vic.gov.au/water/how-we-regulate-the-water-sector/PREMO-water-pricing-framework.

Scotland, a Customer Forum works with Scottish Water to reach agreement on a business proposal which is provided to the regulator, the Water Industry Commission, as the basis for the revenue determination for the next regulatory period.

A key feature of the Commission's enhanced process for RD20, as announced in the Framework and Approach paper of July 2018, was the establishment of a **Negotiation Forum** which would allow a group of customer representatives to directly challenge and negotiate with SA Water as it developed its RBP for the 2020-2024 regulatory period. The Negotiation Forum would comprise a three-person Customer Negotiation Committee (**CNC**), led by an Independent Chair appointed by the Commission, and a three person SA Water Negotiation Team (**SAWNT**). An Independent Probity Adviser (**IPA**) appointed by the Commission would provide oversight of the Negotiation Forum.

Arrangements for the Negotiation Forum, with secretariat support provided by SA Water, were formalised through a Charter signed by the CEOs of the Commission and SA Water, the three members of the CNC, and the IPA in October 2018. The Charter stated that the purpose of the Forum was to 'ensure that the business plan submitted [by SA Water] to the Commission had been thoroughly tested by a wide range of stakeholders'. It established objectives for each component of the Negotiation Forum (ie CNC, SAWNT, IPA), and required that the CNC 'constructively challenge and negotiate with the [SAWNT] 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 valued by customers'.

The Independent Chair of the CNC was required to submit to the Commission a public report (**CNC report**) on the process and outcomes of the negotiation between the CNC and the SAWNT. In addition, the IPA was required to submit to the Commission a public report (**IPA report**) on the probity of the negotiation process. These reports would be the subject of public consultation at the same time as SA Water's RBP was released for consultation.

In addition to the Negotiation Forum, the Framework and Approach paper of July 2018 specified that a Consumer Experts Panel (**CEP**), and a Working Group of technical, safety, environmental and public health regulators (**RWG**) chaired by the Commission, would each provide input to the process as SA Water developed its RBP.

Specifically, the CEP, formed from the members of the Commission's Customer Advisory Committee and SA Water's Customer Advisory Groups, would draw on its collective knowledge of the needs of SA Water's customers to prioritise the key issues that SA Water would need to consider as it developed its RBP, and also that the CNC would consider as it scrutinised SA Water's draft RBP. This would be done through preparation of a Priorities report (**CEP report**) which would be provided both to SA Water and to the CNC.

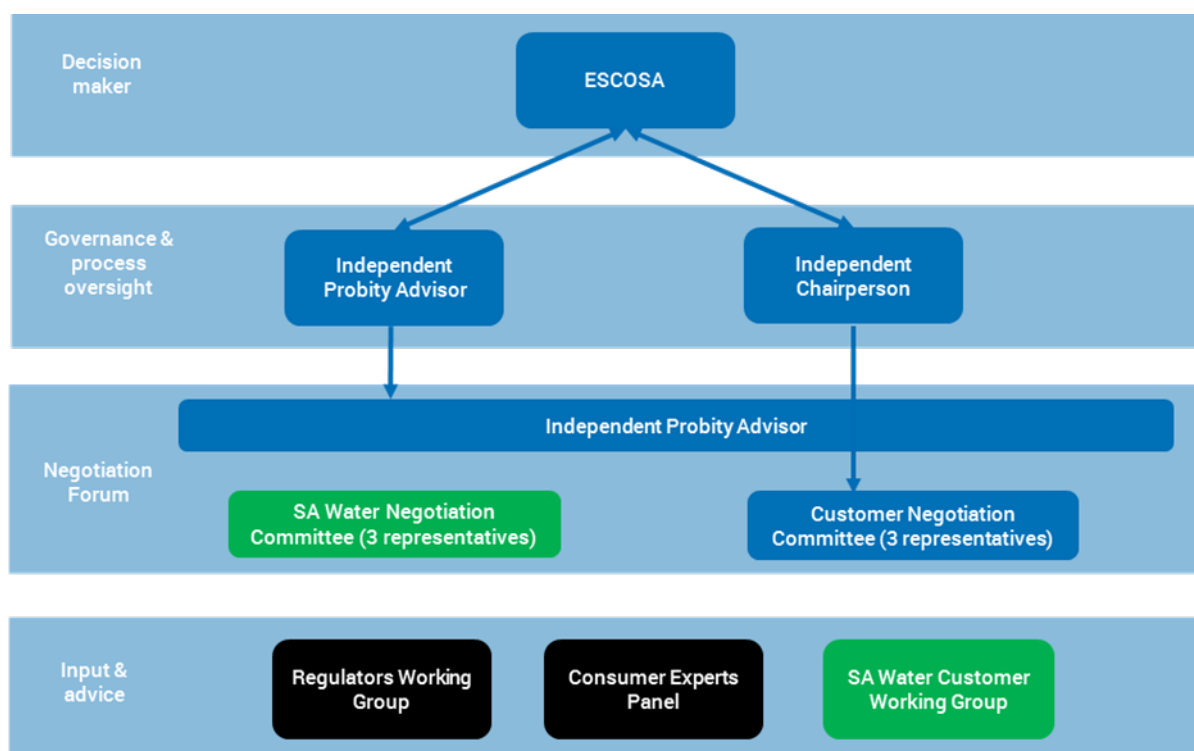
The RWG, chaired by the Commission, would be a vehicle to clarify and co-ordinate (as far as possible) the roles of the economic, technical, safety, health and environmental regulators with respect to SA Water. It would help to ensure that any minimum service standards or requirements were clearly communicated to SA Water and the various parties to the Negotiation Forum. A Charter between the various regulatory bodies was also formalised to establish the RWG.

The RD20 arrangements as proposed by the Commission in the Framework and Approach paper of July 2018 drew in part on the customer challenge ideas employed by the AER in the Australian energy sector and Ofwat in England and Wales, but were most influenced by the negotiation model applied in the Scottish water sector.

The submission, dated February 2018, from Uniting Communities (Mark Henley) to the Commission's Draft Framework and Approach paper appears to have been particularly influential on the Commission's final position on the RD20 arrangements. It endorsed the Commission's commitment to a long term approach to economic regulation of SA Water, as outlined in the Draft Framework and Approach paper, and suggested that a key factor in such an approach was 'reaching an agreement between SA Water, the [Commission] and consumer interests [on] the longer term goals of consumer engagement', and that one such goal 'is for consumer engagement to be both an ongoing process and one that involves clear agreement between consumer interests and SA Water being presented to [the Commission] at the time of lodgement of a regulatory proposal.' The submission referenced the Scottish model¹⁰ and encouraged the Commission to at least foreshadow the adoption of basic elements of the Scottish model as a 'desirable long term approach'.

The intended governance structure for RD20 is set out in Figure 1 below:

Figure 1. RD20 governance structure (Framework & Approach paper, July 2018)



¹⁰ Mark Henley visited the Water Industry Commission of Scotland in 2017 to explore the Scottish regulatory model. For further information on the relationship between the proposed SA arrangements and those applying in the UK, refer 'Consumer Engagement and Regulatory Determinations: Report on a 2018 United Kingdom Study Tour', October 2018, available from the SACOSS website at sacoss.org.au. Refer also section 9.1 of this report, under the heading CNC for a discussion about the latest iteration of the Scottish model.

Figure 1 includes a Customer Working Group formed by SA Water for the purpose of RD20. Discussion about the role of this Group is provided in section 5.2 of this report.

A further key feature of the intended process was the publication by the Commission of a series of Guidance papers which would set out background information, principles and preliminary positions in relation to matters of methodology, parameters and expectations for the RD20 process. The Guidance papers would be released in advance of the workings of the Negotiation Forum and would assist the negotiation process. The Commission's determination process would examine the extent to which the SA Water RBP was consistent with the framework established by the Guidance papers and whether or not any departures were supported by customers.

The Framework and Approach paper of July 2018 set out proposed timeframes for the RD20 process¹¹. The various elements of the Negotiation Forum (CNC, SAWNT, IPA) and the CEP would be in place by August 2018. The CEP report would be produced by late October 2018. The formal activities of the Negotiation Forum would occur between February and June 2019; and the CNC report and IPA report would be submitted to the Commission in October 2019, at the same time as SA Water submitted its RBP to the Commission.

The actual process for RD20 was consistent with the governance structure of Figure 1. Table 2 sets out significant stages and timings in the actual RD20 process, including key Government inputs to the process. There was some slippage in timeframes as proposed in the Framework and Approach paper of July 2018: appointments of the CNC members and the IPA¹², and establishment of the CEP (and hence release of the CEP report) were about two months later than the proposed timeframe; the submittal of SA Water's RBP, and the release of the Commission's draft determination, were about one month later than the proposed timeframe¹³.

Table 2. RD20 process: significant stages and timings

Date	RD20 Milestone
July 2016	Approved RBP for period July 2016-June 2020 (RD16) takes effect
Sep 2016 – June 2017	Commission conducts internal review of process associated with RD16
April 2017-2019	SA Water conducts customer engagement in development of its RBP ¹⁴

¹¹ Refer Table 4.1, Framework and Approach paper, July 2018.

¹² The appointed CNC members were John Hill (Independent Chair), Mark Henley (member of the Commission's Consumer Advisory Committee) and Meg Clarke (member of SA Water's Customer Advisory Group). The appointed IPA was Gaby Jaksa.

¹³ SA Water in its written submission to the current review has stated that the RBP was submitted 2 months later than it had originally planned (refer section 3.2 of this report).

¹⁴ SA Water has advised that customer engagement planning commenced in April 2017 with first engagement in August 2017

Date	RD20 Milestone
23 August 2017	Ministerial direction issued to SA Water pursuant to section 6 of Public Corporations Act 1993 requiring it to undertake works for the Northern Adelaide Irrigation Scheme, including funding of specified capital expenditure for years 2017/18-2020/21 ¹⁵
Nov 2017	Commission releases draft Framework and Approach paper for RD20
June 2018	Treasurer commissions independent review of the value of SA Water's assets used in the provision of drinking water retail services
July 2018	Commission releases final Framework and Approach paper for RD20
Sep-Oct 2018	Commission appoints members of the CNC, IPA and establishes the CEP
Oct 2018	Commission releases Guidance papers 1 - 5
28 Oct 2018	Treasurer issues 1 st pricing order specifying four year regulatory period, revenue control form of regulation, and other matters relevant to RD20 ¹⁶
Nov-Dec 2018	Commission and SA Water provide briefings for CNC
Late Dec 2018	CEP report finalised
Feb-May 2019	CNC meets with relevant government agencies and regulators regarding water policy and regulatory obligations
May 2019	Commission releases Guidance papers 6 - 7
Feb-Jun 2019	Negotiation Forum meetings: draft SA Water RBP for 2020-2024 released to CNC at 3 rd Forum meeting on 26 February
Jun 2019	Treasurer receives report of independent review of the value of SA Water's RAB for drinking water retail services
July 2019	Commission releases Guidance paper 8
Oct 2019	CNC report, detailing negotiation process and outcomes, submitted to Commission
Oct 2019	IPA report regarding the negotiation process submitted to Commission
Nov 2019	Commission releases Guidance paper 9
1 Nov 2019	SA Water submits proposed RBP for 2020-2024 to Commission

¹⁵ Refer SA Government Gazette, 29 August 2017, p 3788

¹⁶ Refer [treasury.sa.gov.au/economy, taxes and rebates/economic regulation](http://treasury.sa.gov.au/economy,taxes%20and%20rebates/economic%20regulation). Refer also SA Government Gazette, 15 November 2018, p 3971.

Date	RD20 Milestone
Nov – Dec 2019	Consultation on SA Water’s proposed RBP, CNC report and IPA report
4 Mar 2020	Commission issues draft regulatory determination
Mar – Apr 2020	Consultation on draft regulatory determination
25 May 2020	2 nd Pricing Order issued by Treasurer specifies value as at July 2013 of SA Water assets used in provision of drinking water retail services, and prohibits certain types of variation of revenue controls during the regulatory period ¹⁷
28 May 2020	Ministerial direction issued to SA Water pursuant to section 6 of Public Corporations Act 1993 requiring it to purchase or provide specified services, facilities and contributions from 1 July 2020 ¹⁸
11 Jun 2020	Commission publishes final regulatory determination; executed 22 June 2020 ¹⁹ .
Jun 2020	SA Water finalises water and sewerage tariffs (consistent with Commission’s determination) for Government approval and gazettal ²⁰ .
1 July 2020	Approved SA Water RBP for period July 2020 – June 2024 takes effect

It is noteworthy that the economic context for RD20 was one of great uncertainty, with prevailing interest rates at historic lows. This was compounded in the first quarter of 2020 by the advent of the COVID-19 global pandemic, precipitating a major economic downturn, both internationally and in Australia, and introducing a significant new factor for the Commission to consider in preparing its Final Determination.

In all, nine Guidance papers were released by the Commission at various stages during the process. The topics of these Guidance papers are summarised in Table 3. The last two of the Guidance papers were issued following completion of the formal meetings of the Negotiation Forum.

¹⁷ Refer treasury.sa.gov.au/economy, taxes and rebates/economic regulation. Refer also SA Government Gazette, 18 Jun 2020, p. 3482.

¹⁸ Refer SA Government Gazette, 11 Jun 2020, p 3378.

¹⁹ Refer SA Government Gazette, 25 Jun 2020, p. 3600.

²⁰ Refer SA Government Gazette, 25 Jun 2020, p. 3658.

Table 3. List of Guidance papers released by the Commission during the RD20 process.

Guidance paper	Purpose
1. Overview of economic regulation of SA Water. November 2018	Confirmed the process for RD20 and provided stakeholders with an understanding of future opportunities to provide input into the determination.
2. Revenue regulation and prices. November 2018	Explained how SA Water's drinking water and sewerage revenues would be determined, using a cost-based (building blocks) approach and informed by a negotiation process. It also explained how the Commission would regulate the prices of SA Water's excluded services.
3. Service standards. November 2018	Explained the Commission's process for reviewing its principal consumer protection industry code: the Water Retail Code—Major Retailers, which includes customer service standards.
4. Prudent and efficient expenditure. November 2018	Explained the Commission's approach to reviewing SA Water's proposed expenditure to assess whether it is prudent and efficient, to feed into the calculation of the maximum revenue allowance. It provided context on the 'negotiable' and 'non-negotiable' elements of SA Water's costs, and provided an indication of some of the potential future cost drivers. It also provided guidance to SA Water on the minimum information that it should provide to the Negotiation Forum to allow it to assess whether proposed initiatives, programs and projects are prudent and efficient.
5. The cost of funding and using assets. November 2018	Explained the Commission's methodology for determining the efficient cost of funding and using assets to provide drinking water and sewerage services, in particular the return on, and of, regulated assets.
6. Treatment of inflation in the regulatory rate of return. June 2019	Provided further technical guidance relating to Guidance paper 5. In particular, it outlined approaches that could be used to estimate inflation, for the purpose of calculating the regulatory rate of return using a real, post-tax, weighted average cost of capital.
7. The averaging period of the risk free rate. June 2019	Presented research that examines different averaging periods that may be used for determining the risk-free rate as part of the regulatory rate of return for RD20.
8. Treatment of capital expenditure - addressing uncertainty. July 2019	Discussed the Commission's proposed treatment of uncertain costs or benefits in SA Water's capital expenditure plan for the 1 July 2020 to 30 June 2024 period.
9. Annual updates of the rate of return. December 2019	Outlined a proposed methodology for updating the regulatory rate of return on an annual basis. In particular, it outlined the advantages and limitations of the proposal, provided guidance on how the proposed methodology was intended to operate, and highlighted key questions for stakeholder consideration.

Remaining sections of this report detail stakeholder views on the RD20 process as drawn from stakeholder interviews, written submissions and other sources (eg submissions made to the Commission by particular organisations during the RD20 process, CNC report, IPA report, CEP report, etc). The CNC and IPA reports are very relevant to this review since they provide the main source of information from those bodies on the RD20 process (ie any further comments made by CNC members or the IPA during the current review were generally elaborations of the views expressed in the earlier reports). Sources of the stakeholder views expressed in this report are clearly documented.

Section 3 summarises stakeholder views on the operation of the Negotiation Forum, perhaps the key element of the RD20 process and certainly its most innovative aspect. Section 4 deals with two closely related issues which are derivative from those raised in section 3, ie communication (particularly by the Commission to stakeholders) and timing matters. Section 5 considers customer engagement, particularly the manner in which this was undertaken by SA Water in RD20. Section 6 presents stakeholder views regarding the process by which the Commission dealt with the consideration of an appropriate regulatory rate of return for SA Water. Section 7 deals with the issue of regulatory co-ordination, and section 8 with the role of Government in RD20. Finally, section 9 presents stakeholder views on possible amendments to the RD20 process to apply to RD24. The issues presented in each section are highly inter-related, and hence there is some repetition. However, the structuring of stakeholder views in this manner is intended to provide guidance to the Commission in a more useful manner.

3 Negotiation Forum

Reference has been made by several stakeholders to the 'experimental' nature of the RD20 process, particularly through establishment of the Negotiation Forum (comprising the CNC, SAWNT, and IPA), with governance arrangements formalised through a Charter. The Preface to the CNC report notes that 'This is the first time customers have had an opportunity to challenge SA Water's business plan in any depth and the process was something of an experiment.' One member (Mark Henley) of the CNC, in interview, used the term 'pilot' to describe the CNC's role in RD20. The written submission from Heather Smith refers to 'the experiment we ran in SA'. A key issue for the Commission is to understand stakeholder sentiment regarding the outcomes of this experiment and possible changes to arrangements for the Negotiation Forum which might improve its effectiveness.

This section of this report discusses stakeholder views on the three components of the Negotiation Forum and the manner of their interaction. Stakeholder views regarding changes to the process for RD24 are discussed in section 9 of the report.

It is noted at the outset that there is strong stakeholder support for measures to involve customers more closely in the regulatory determination process. As discussed briefly in section 2, a variety of such measures are being applied in the energy and water industries in Australia and the United Kingdom, with the South Australian RD20 approach modelled most closely on the Scottish Water approach.

Several stakeholders (eg SA Council of Social Services (**SACOSS**) in interview and in its written submission to this review) commended the Commission on its initiative in establishing the Negotiation Forum as the vehicle for giving customers a stronger voice in the process. The CNC report (p 86) expressed 'our appreciation of the initiatives taken by the Commission and SA Water in subjecting their plans and the regulatory process to close and detailed scrutiny by a group acting on behalf of customers.'

The written submission to this review from Uniting Communities commended the Commission for 'making these process and structural changes and for being prepared to try to influence regulatory changes that give better outcomes for consumers and which provide a sound base for community growth and economic development'. It referred to the lower water prices that resulted from the determination and suggested that such an outcome 'would not have been achieved without a proactive attitude from the [Commission], active and informed consumer input and SA Water responsiveness'.

There are several stakeholder perspectives from which to view the effectiveness of the Negotiation Forum. We examine each of these in turn.

3.1 Independent Probity Adviser

The purpose of the IPA, as outlined in the Charter, was to provide oversight of the integrity and fairness of the process and information exchange between the SAWNT and CNC in the Negotiation Forum. The formal meetings between those bodies occurred between February and June 2019, and the IPA was present for all meetings. The IPA report was submitted to

the Commission in October 2019 and was subsequently made public. In preparing the report, the IPA had access to at least a draft of the CNC report.

The IPA concluded in his report that the Negotiation Forum process was conducted with due probity, and with integrity and fairness. The IPA also concluded that the Negotiation Forum process 'was, to a great extent, successful and worthwhile' and had fulfilled its purpose and objectives as specified in the Charter. The IPA stated that this latter conclusion was 'evidenced by the quality of the [CNC report] which should prove to be a valuable analysis and discussion of SA Water's business plan for [the Commission].' He also concluded that 'Overall, the Forum worked effectively as a vehicle for the presentation of information and its discussion'.

The IPA was aware from the CNC report, and presumably also from observations made at the formal meetings of the Negotiation Forum, that substantive negotiations between the CNC and SAWNT had not occurred²¹; that point is made clear in the IPA report. Nevertheless, the IPA noted that the Charter proposed that the CNC 'would constructively challenge and negotiate with SA Water with a view to agreeing on the matters to be included in SA Water's proposed business plan'. The IPA stated that 'the CNC certainly did effectively challenge aspects of the business plan even without negotiation', citing as evidence the analysis and argument contained within the CNC report, and also the IPA's view that there was extensive agreement between the parties 'on many aspects of the business plan'.

The IPA was interviewed as part of the current review. He indicated that the conclusions put forward in his report of October 2019 remained his views regarding the Negotiation Forum component of the RD20 process.

Few stakeholder comments were received regarding the effectiveness of the role played by the IPA in the RD20 process. The Uniting Communities written submission commented that the oversight of integrity and fairness provided by the IPA 'added even greater confidence in the regulatory process and probably played a role in making the processes of engagement and consumer input to the regulatory process somewhat 'smoother' '.

3.2 SA Water

SA Water has commented, both in its written submission to this review and during interviews, on the process leading up to the Commission's announcement in the Framework and Approach paper of July 2018 of its intention to establish a Negotiation Forum so that customers would have a stronger voice in the RD20 process.

It has suggested that it had developed, very early in the regulatory period, a verbal understanding with Commission staff that SA Water would submit to the Commission a draft regulatory submission for consultation and, following feedback from the consultation process, the submission would be jointly reviewed by the Commission and SA Water and resubmitted for final approval. It had commenced customer engagement processes and development of business cases based on this understanding.

²¹ For further discussion on the lack of substantive negotiations within the Negotiation Forum refer discussion below under the heading Customer Negotiation Committee.

The draft Framework and Approach paper of November 2017 did not refer to any such understanding. It did indicate the Commission's intention to improve the framework through various means, including by 'ensuring that SA Water consults with stakeholders on its RBP before submitting it to us, to demonstrate the credibility of its proposals. If we are satisfied that the proposals best promote the long term interests of SA Water's customers, we will make a determination that approves those proposals'²².

In a submission of January 2018 regarding the draft Framework and Approach paper, SA Water indicated its support for increased customer involvement in the RD20 process and stated that 'we have already commenced a comprehensive engagement process to ensure we understand what our customers value and that, when we submit our regulatory business proposal in 2019, it is aligned with customers' expectations'.

SA Water staff have submitted in interview that the announcement of the Negotiation Forum in mid-2018, based in large part on the Scottish Water regulatory model, came as a surprise to SA Water. While SA Water staff were familiar with the model²³, they had not anticipated that a similar model would be incorporated into the RD20 process at what they regarded as a late stage in the 2016-2020 regulatory period. By mid-2018, significant work had already been undertaken on development of the RBP. In their view it represented a significant change in the process from that which had been previously understood. Their new understanding was that there would now be a formal role for customers to negotiate an outcome with SA Water, thus lessening or even negating the need for a traditional regulatory review by the Commission. SA Water has submitted that, in their view, the process changed again in November 2019 when the Commission determined, following consideration of the CNC report, that a traditional review would still be required and proceeded to appoint a technical consultant, Cardno, to assist in that review.

SA Water staff have submitted that there were several impacts arising from the introduction of the Negotiation Forum into the RD20 process in mid-2018:

- It reduced the amount of direct dialogue with the Commission and its staff, as the Negotiation Forum became the principal vehicle for discussion regarding the draft RBP; the relationship between the Commission and SA Water was thus less collaborative than in the RD16 process. Whereas for RD16, both SA Water and the Commission seemed to be working towards the same goal, RD20 seemed to be more a 'present and defend' review.
- It introduced significant time pressure into the RD20 process. The time for formal customer challenge and negotiation was brief (February - June 2019) and was insufficient to allow the CNC to understand in sufficient detail both its role in the regulatory process and SA Water's proposal, let alone to undertake genuine negotiation. This contributed to a delay of two months in SA Water submitting its RBP

²² Draft Framework & Approach paper, November 2017, p. 2.

²³ Senior staff from the Commission (Adam Wilson) and SA Water (Jamie Hollamby) had visited the UK (including Scotland) in 2017 to review water regulatory models.

to the Commission (November 2019)²⁴ and compressed the time that was available for the Commission and its technical consultant to undertake a traditional regulatory review, leading to increased tension in dealings between Commission and SA Water staff. SA Water, in its written submission has suggested that the compressed timeframes at this stage of the process 'reduced the opportunity and therefore quality of engagement for the expenditure review, development of service standards and confirmation of the revenue model, leading to misunderstandings'.

- SA Water has also noted that the Negotiation Forum process meant that it was required to develop a business plan that was accessible to the CNC, which then did not align with the detailed requirements of the Commission's technical consultant when the traditional regulatory review was initiated late in 2019. SA Water staff have commented that the changing nature of the RD20 process introduced significant inefficiencies into the process.

In an interview for this report, Jamie Hollamby has submitted that, while the Negotiation Forum was a vehicle for increasing customer involvement in the process, it did not reduce the amount of work that Commission staff were required to undertake in making the determination – it was still a 'full cost review' with a compressed timeframe in which to conduct the review.

The perceived approach of SA Water to the Negotiation Forum process has been the subject of much stakeholder comment.

The CNC report (Preface) notes that SA Water staff went to considerable effort in presenting their case to the CNC and in responding to requests for further information, and that 'there was a willingness to engage with the Committee which reflects well on the culture of the organisation'. In a written submission to this review, the CNC Chair noted that 'a most valuable feature of the process recently concluded was the access to Board papers on the relevant proposals. This should continue. Also most valuable was the access to subject experts and the freedom they were given to communicate with [CNC] members.'

Nevertheless, the CNC report concludes (p 89) that the process was not a negotiation in the sense of 'a discussion in which both sides put their view and make concessions in order to arrive at an agreement. This process never occurred. Instead, the Committee was invited to accept the wide range of proposals constituting SA Water's regulatory proposal'. The CNC report suggests that in 'a true negotiation, the Committee would have formed a view about an acceptable increase in revenue and then engaged with SA Water on the question of whether some worthwhile projects might be deferred or abandoned in order for the plan to fit within an acceptable revenue cap'.

The CNC report (p 87) comments that CNC members expected that at least some of the expenditure proposals in the RBP might have been the subject of debate, but instead 'they were met with a determined defence of every aspect of the business plan. ... only the most trivial of changes were made to the business plan in response to issues raised by the

²⁴ SA Water's original intention was to submit the draft RBP to the Commission by 31 August 2019; the actual date of submission was 1 November 2019. The Commission released the draft RBP for consultation on 11 November 2019.

Commission.’ One member of the CNC (Mark Henley), during interview, characterised the SA Water response to CNC pushback on specific projects as being ‘defensive’ and suggested that a cultural change concerning customer input to the regulatory process was needed within SA Water.

SA Water staff have commented briefly on the formal discussions with the CNC between February and June 2019. Much of this time was taken up with what they termed an ‘educative’ approach - providing background to the CNC on various aspects of the RBP. SA Water was inevitably ‘defensive’ regarding the content of the RBP given the amount of effort, including engaging with customers, which had been devoted to RBP preparation prior to the commencement of formal discussions with the CNC. SA Water staff suggested that, while there had been discussions within the Negotiation Forum regarding amendments to the RBP, finalised CNC views on what should be altered weren’t communicated to SA Water until the CNC report was published. They commented that there was misunderstanding between the parties to the Negotiation Forum as to the expected outcomes of the process, and that negotiations did not occur in the manner expected at the outset.

The CNC report (p. 13), in discussing the format of Negotiation Forum meetings, notes that for much of the negotiation period, the meetings involved a presentation by SA Water of subject matter relevant to the RBP followed by response with questions and observations from the CNC. ‘The final three meetings of the Forum were different in nature and format. For those meetings, the Committee provided its preliminary responses to the key aspects of SA Water’s business plan in advance of the meeting and indicated whether or not it would support the proposals for inclusion in SA Water’s regulatory business plan, whether it would oppose them or whether it would suggest that SA Water undertake further analysis.’

3.3 Customer Negotiation Committee

The CNC report (Chapter 16) makes several observations, and suggestions for improvement, regarding the Negotiation Forum process. Its comments regarding the lack of what it termed ‘true negotiation’ have been detailed in section 3.2.

It notes that the greatest shortcoming in the CNC was ‘the lack of a common, precise understanding of the outcome or output which the process was intended to produce’ amongst its members. The CNC Chair believed the CNC’s role was to assist the Commission by challenging and probing each aspect of SA Water’s RBP; for another member the focus was on the quality of SA Water’s customer engagement concerning each aspect of the RBP; for the third member, the expectation was that an agreement would be reached between the CNC and SA Water documenting expenditure initiatives included in the RBP and the consequential revenue caps (similar to the Scottish Water model).

It became apparent to the CNC after the formal negotiation process had been completed that ‘in order to achieve its objective of greater customer involvement in the 2020 regulatory determination, the Commission reached an understanding with SA Water that, to the extent that agreement could be reached between SA Water and the Committee, the work of convincing the Commission about the proposed business plan for the 2020 regulatory period would be reduced’ (p 86, CNC report).

CNC members, during interview for this report, again stressed that the lack of clarity about expected outcomes, both within the CNC and more broadly, was a major impediment to the work of the Negotiation Forum. It would have been helpful for the parties involved (Commission, SAWT, CNC and IPA) to have had a discussion early in the process to ensure that there was a shared understanding about the expectations in the process and better alignment amongst the parties. It was also suggested that the Government needed to be involved in such discussions since Government policy in the water sector necessarily impacts on the matters to be included in the approved RBP. Stakeholders have commented extensively on the role of Government in the RD20 process, and this is discussed in section 8 of this report.

The CNC report (Chapter 16) also highlighted the lack of time that was available to the CNC to undertake the various tasks assigned to it in the Charter, ie 'to understand SA Water's strategic direction and priorities, to examine and challenge SA Water's regulatory proposal and to elicit the views of customers'. The CNC had a period of up to five months (February – June 2019) to examine and challenge the draft RBP. The complexity of this task was such that the CNC 'felt pressured to respond to proposals before it had given them adequate time for consideration'. The CNC was reliant on the CEP report (and subsequent discussions with the CEP) as well as the community engagement work already undertaken by SA Water to elicit the views of customers. There was insufficient time available for the CNC to 'gain an independent and reliable understanding of the preferences and priorities of SA Water customers.'

The CNC report (Chapter 16) suggests that, partly as a result of this compressed timeframe, the negotiation process was skewed towards consideration of the details of the RBP at the expense of 'the form and content of the customer and stakeholder engagement undertaken by SA Water in order to formulate the plan.' In retrospect, the time between appointment of CNC members (October 2018) and commencement of the negotiation period (February 2019) could have been used more productively if it had been focused on scrutiny of SA Water's customer engagement activities.

A further issue which impacted on the value of the negotiating process, as perceived by the CNC, was the difficulty SA Water had in settling its preferred method of calculating the regulatory rate of return, and because of further decreases in the ten-year Commonwealth bond rate. As a consequence, SA Water didn't finalise its position on revenue caps (and hence projections of price changes) until well after the period for formal negotiations had finished. 'The Committee has reservations about the value of an engagement process where this critical parameter is not available to customer representatives until after the process has concluded' (CNC report, p. 40).

Both timing pressures and customer engagement matters (including the role of the CEP) in the RD20 process have been the subject of considerable comment from stakeholders and are discussed separately in later sections of this report.

The CNC report makes frequent reference to CNC members not having the technical expertise to express a view on particular proposals (eg, certain projects or parameters that combine to form the regulatory rate of return). In discussion with CNC members, this deficiency was acknowledged, although it was stated that the relatively short duration of the negotiation

period limited the extent to which more in-depth investigations could be conducted. With a longer time frame greater technical support from Commission staff or specialised consultants might have been feasible.

SA Water, in its written submission to this review, commented that 'The CNC did not have the expertise for many aspects of the review and would have been better supported by access to [Commission] personnel or independent experts to help them in their review.' SA Water also suggested that the scope of the CNC's review role included aspects that it did not believe customers could influence (eg, environmental obligations, rate of return methodology).

SA Water, in its written submission, also addressed the matter of engagement between the CNC and other customer representative groups. It suggested that members of its Business Customer Advisory Group had commented that 'they were not appropriately consulted by the CNC'. SA Water staff clarified in interview that the Business Customer Advisory Group had had only one meeting with the CNC and felt 'disconnected' from it.

SA Water suggested that if the CNC (or similar) is to be established for future determinations, it would be necessary to establish a clear charter for engagement between the CNC and customer groups, and that the Commission should have a role in monitoring this issue. Members of SA Water's Residential and Business Customer Advisory Groups were also members of the CEP for the purpose of RD20 and so were involved in the CNC/CEP engagement processes (refer section 5 of this report). The CNC has acknowledged that there was insufficient time available for it to dialogue adequately with the CEP after receipt of the CEP report.

The optimum size and composition of a customer challenge/negotiation body such as the CNC was commented on by several stakeholders. Jamie Hollamby noted that customers are a very diverse group with different opinions, so that if the body is too small it won't be sufficiently representative. This underscores the importance of effective engagement between the CNC and CEP. Several CEP members drawn from the Commission's Consumer Advisory Committee (Elaine Attwood, Andrew McKenna, Sandy Canale) commented that the CNC needed to remain relatively small; Elaine Attwood suggested that the CNC might be supplemented by one additional representative of the CEP. Heather Smith, in interview, queried the usefulness of an independent Chair for the CNC, suggesting that a consumer advocate might be better placed for such a role.

The Uniting Communities written submission, unsurprisingly, emphasises many of the points made by the CNC regarding the Negotiation Forum process in RD20, and in particular the role of the CNC. It stresses the time limitations placed on the CNC, the lack of clarity around expected outcomes from the process, and the approach taken by SA Water to the negotiations ('a process that was more akin to a parliamentary committee review, with a challenging of key assertions made by SA Water').

Uniting Communities also noted that 'it was evident from early in the CNC process that the Chair was required to prepare a major report which to our minds duplicated at least some of the work that [the Commission] would subsequently be required to undertake. The requirement for an extensive report ... added tangible pressure to the CNC from day one and perhaps limited the opportunity for a more engaging and reflective approach'.

3.4 Other Stakeholders

Various other stakeholders have commented on particular aspects of the Negotiation Forum as it applied in RD20.

Several stakeholders, in interviews for this review, expressed concern that the RBP which emerged from the Negotiation Forum process and which SA Water submitted to the Commission in November 2019 contained insufficient detail regarding project proposals; they commented that the CNC report provided them with much greater clarity regarding those proposals.

SACOSS, in a written submission to this review, noted that the CNC had not engaged in genuine negotiations with SA Water, partly due to time limitations, and that its role had been restricted to one of customer challenge. But it commented that 'challenging the costs and benefits of the projects proposed by SA Water from a consumer perspective is a necessary and important part of the regulatory process, and SACOSS considers that this was an important role for the CNC to perform. In analysing SA Water's RBP, SACOSS relied heavily on the information contained in the [CNC report], as we found the detail provided by SA Water on its project proposals [in the RBP] was limited'. SACOSS also submitted that without the CNC report, as well as the additional information that the CNC had obtained from SA Water and the Commission on capital expenditure proposals, SACOSS would have found it more difficult to have commented on whether, on balance, SA Water's proposals were in the long term interests of vulnerable consumers.

Some members of the RWG (those from the DHW and the EPA), during interview for this report, also commented on the 'high level' nature of the RBP, such that it was difficult to locate details of relevant projects.

In her written submission to this review, Heather Smith compared the RD20 process with those of Scotland, England/Wales, and US approaches²⁵. She noted that increased customer involvement in the process can lead to several benefits, including increased quality of regulatory decisions, legitimacy of the process (and ultimately of the decision), capacity building (of all participants in the process), better actual results, and trust and understanding between the participants. She suggested that the Negotiation Forum arrangements, and in particular the CNC, most closely resemble the challenge panels of England/ Wales; and concluded that, while the CNC and the CEP report added legitimacy to the ultimate determination, there was little evidence that the outcome was any different to that which would have resulted in the absence of those factors.

Comments regarding the roles of the CEP and RWG, including their interactions with the CNC, are discussed in later sections of this report.

²⁵ Heather Smith travelled to the UK as part of a SACOSS group in 2018 studying regulatory approaches in England/Wales and Scotland. Refer 'Consumer Engagement and Regulatory Determinations: report on a 2018 United Kingdom Study Tour', October 2018, available from the SACOSS website at sacoss.org.au.

4 Communication and Timing

Alignment of stakeholder expectations and understanding regarding process and outcomes is an important aspect of a successful regulatory review. Section 3 of this report indicated that this was not always evident in RD20. Particular issues regarding communication from the Commission to stakeholders, as well as timing pressures, may be partly responsible for this outcome.

4.1 Communication

Effective communication and dialogue between regulator and stakeholders is a key principle of best practice regulation. The information provided by the regulator should be relevant and comprehensive, accessible, timely and inclusive.

Matters regarding communication, particularly by the Commission, during RD20 have been raised by various stakeholders and are summarised here.

SA Water

SA Water endorsed the use of a Framework and Approach process and the provision of Guidance papers in RD20 although it suggested that such papers should have been released much earlier in the process. SA Water provided submissions to the Commission on the various Guidance papers as they were released. In a submission dated 6 November 2018, SA Water noted that 'The Guidance papers will play a critical role in providing direction for SA Water and the customer representatives, the Customer Negotiation Committee, in negotiating SA Water's regulatory proposal. If that proposal is to be successful, it is important that the Guidance papers provide accurate and full information and not create unrealistic expectations for the Customer Negotiation Committee or for customers.'

SA Water in its written submission to the present review commented on the extent of direct dialogue between itself and the Commission during RD20. It noted that both organisations had a shared interest in advancing the long term interests of consumers²⁶. It stated that during RD16 it had engaged openly with the Commission and other stakeholders before it submitted its RBP but that this had not happened in RD20, with the Commission seeking to remain independent of the CNC process. 'This removed opportunity for useful discussion and feedback and ultimately affected the suitability of our proposal to ESCOSA's needs/expectations. The process would benefit from this being reinstated and clear guidance provided on' information requirements.

SA Water also noted that 'the late addition' of the Negotiation Forum into the RD20 process was a key factor leading to a two month delay in the RBP being finalised and submitted to the Commission. 'This resulted in time limitations for effective review of our proposal and resulted in misunderstandings. Reduced time meant we were not always informed of [Commission] decisions before they were made public.' SA Water staff have clarified that this refers to the

²⁶ The Commission endorsed such a view in the Draft Framework and Approach paper of November 2017, noting (p. 4) that there was a strong alignment of objectives between SA Water and the Commission and that this should provide for a less adversarial and more constructive relationship.

Draft Determination incorporating 'errors' in the Cardno report which could have been corrected if SA Water had been given sufficient time to comment on the Cardno report.

SA Water also commented that information provided by the Commission regarding the regulatory determination process and its outcomes should be made more accessible to stakeholders, particularly consumers. It has noted that the Final Determination: Statement of Reasons is very lengthy (about 300 pages) with key information, such as allowable capital expenditure, spread out across the document. It has suggested that, in order to promote transparency and customer understanding, there would be benefit in considering how the process, particularly the outcome of the determination, can be better structured and communicated.

CNC

One member of the CNC (Mark Henley) also strongly supported the Commission's consultation on the Framework and Approach for RD20 and the use of Guidance papers. The CNC report notes (p. 11) that Guidance papers 6, 7 and 8 were prepared by the Commission 'following requests from the Committee for clarification of certain technical matters'. The Uniting Communities written submission noted 'that the [Commission] staff were very accessible and happy to provide information at any time'.

The CNC report discussed the different views that each member of the Committee had concerning the expected outcome from the Negotiation Forum process (refer section 3.3 of this report). One member of the CNC (Mark Henley) commented that it would have been helpful if the Commission had communicated more effectively with the various parties to the Negotiation Forum to ensure that there was a shared understanding on this matter. The Uniting Communities written submission suggests on this point that 'the CNC would have benefited from an initial joint briefing that covered [the Commission's] expectations about the sort of outcomes to be achieved and facilitated a discussion amongst the participants about the process to be undertaken and the meaning of negotiation'.

Other Stakeholders

SACOSS, in its written submission to this review, noted that it found the Guidance papers extremely useful in preparing its submissions during RD20 and commented that 'The papers assisted with addressing some of the information asymmetries, but SACOSS considers there was still a significant information gap for consumers in terms of details on proposed projects. ... any information produced by [the Commission] that can provide greater transparency in the process is welcome'.

SACOSS also called for 'more transparency and greater public access to information on SA Water's expenditure proposals, including willingness to pay information and expert reports', and suggested that access to such information should be provided at an earlier stage of the regulatory process so that stakeholders could carry out testing of the information. Furthermore, the CNC could make its analysis available to the public through discussion papers, as is done by the AER's CCP.

The Uniting Communities written submission, in commenting on the Guidance papers, suggested that it would be preferable for at least some of the papers to be released up to two

years prior to the RBP being submitted to the Commission, and that they 'would themselves be the subject of discussion and engagement between consumer interests and other stakeholders'. The Department of Treasury and Finance (Stuart Hocking) made a similar point in interview, suggesting that the Commission might facilitate workshops regarding Guidance papers after their release.

CEP members drawn from SA Water's Customer Advisory Groups commented that the information presented to the CEP by the Commission was often very technical and difficult to digest; simpler language would have helped.

4.2 Timing

A frequent comment from stakeholders about the RD20 process was that it suffered from time pressures.

CNC

As noted in section 3, the CNC report emphasises that one of the major impediments to the effective operation of the Negotiation Forum was that a period of less than five months (mid-February – June 2019) was available for the formal negotiation process between the CNC and SA Water. This time was insufficient to enable the CNC to undertake the various tasks assigned to it under the Charter. The time between the appointment of the CNC members (October 2018) and the commencement of the meetings between the CNC and SAWNT could have been used more productively, particularly in the scrutiny of SA Water's customer engagement processes.

More fundamentally the CNC Chair stressed, during interview for this report, the need for much closer alignment between the ongoing planning processes of SA Water and the periodic (currently four year) regulatory determination process. SA Water staff, in interview, and Heather Smith, in her written submission, have echoed this view.

The CNC Chair has stated that this requires that the regulatory determination process must also become substantially an ongoing process, requiring that the governance arrangements such as those for the Negotiation Forum and the CEP would in some way be continuous. This would help to facilitate alignment between the various participants in the regulatory determination process and provide for a more efficient process.

In his written submission to this review, the CNC Chair has stated (specifically with reference to CNC scrutiny of SA Water's stakeholder engagement in preparing its RBP) that the process needs to be continuous 'rather than focused on a particular regulatory determination. Failing a continuous process, one which begins well before the relevant regulatory period is required to give time for [CNC] members to become familiar with SA Water and to influence SA Water's program of engagement with individual customers'. (Refer section 5 of this report for discussion regarding customer engagement issues, and section 9 for discussion regarding stakeholder views concerning the RD24 process).

SA Water

SA Water staff have suggested that, for a variety of reasons, the RD20 process was rushed, particularly over the final twelve months of the regulatory period. Its RBP was submitted to the Commission two months later than had been originally scheduled, in part because of the requirement to enter into a negotiation process with the CNC. This placed significant time pressure on the Commission staff, particularly as the Negotiation Forum had not resulted in any clear outcomes that might have reduced the Commission's workload and avoided the need for a traditional regulatory cost review.

The uncertain economic outlook (historically low interest rates and, from March 2020, the advent of the COVID-19 pandemic) added to the pressure and contributed to a delay by SA Water in finalising its approach to the regulatory rate of return.

In addition, interventions from the Government in late May 2020 (refer Table 2 of this report) added to the time pressure. (Refer section 8 of this report for discussion about the role of Government.)

The Commission's Draft Determination was released for a brief period of consultation later than had been anticipated and SA Water staff have noted that the accompanying Cardno technical consultant report was provided to SA Water only 1 day before it was made public. The Commission's Final Determination was also later than had been anticipated (11 June). The finalisation of tariffs to apply from 1 July 2020 (utilising the revenue model of the Commission) was thus also extremely rushed, with the revenue model being received by SA Water from the Commission only a very short time before the matter was due to be submitted for Cabinet approval.

SA Water has suggested that many of the time pressures in the RD20 process could have been avoided if key process matters (eg Negotiation Forum arrangements) had been agreed much earlier in the regulatory period. Furthermore, various regulatory decisions (eg method for regulatory rate of return, service standards, amendments to the Water Retail Code) could be finalised much earlier in the process than occurred in RD20.

CEP

CEP members also commented in interview on the limited time available for the CEP report to be prepared and noted that there were time pressures associated with CEP meetings. (Refer section 5 of this report for comment on the role of the CEP.) The CEP report was required to be finalised by December 2018 so that it could be reviewed by the CNC and by SA Water from early 2019. There was limited time for CEP members to agree on a set of priorities so the approach adopted was for each member to specify three priorities which were incorporated into the CEP report. One member of the CNC (Mark Henley), who was also a CEP member, has commented that the CEP process was rushed and pressured.

5 Consumer Engagement

The Charter establishing the Negotiation Forum states that the purpose of the CNC was to elicit and represent the perspectives, preferences and priorities of SA Water's diverse customer base in the Negotiation Forum.

The key sources of information for the CNC regarding customer perspectives, preferences and priorities were the CEP report and SA Water's own customer engagement activities. The CNC would need to be satisfied that proposals in the RBP properly reflected those perspectives, preferences and priorities.

The customer perspective is relevant to all aspects of the regulatory determination. However, the assessment of proposed capital expenditure has a particular focus, since the Commission has enunciated a clear position that it will only allow what it terms prudent and efficient expenditure to be added to SA Water's regulated asset base. Proposed expenditure on an activity will be considered prudent where there is a clear justification for the activity, and this is informed by an assessment of whether the proposed expenditure is driven by a legislative or regulatory obligation, or an expectation that the activity will deliver benefits to customers that outweigh the costs, or a clear expectation from customers that an outcome should be achieved, and that they are willing to pay for that outcome²⁷. Proposed expenditure would be considered efficient where it represented the lowest sustainable (or long-term) cost of achieving the intended outcome, from the range of plausible options that had been considered.

Thus in scrutinising proposed projects in the draft RBP that were not driven by a legislative or regulatory obligation, the CNC would focus on such matters as estimated customer costs and benefits, customer expectations, and customer willingness to pay, and the extent to which SA Water had been able to demonstrate such matters through its customer engagement activities.

5.1 Consumer Experts Panel

As noted earlier in this report, the CEP report was intended both to outline to SA Water the key issues that members expected it to consider and respond to as it developed its RBP, and to guide the CNC on matters it might consider in scrutinising SA Water's draft RBP.

The CEP was formed in September 2018 from members of the Commission's Consumer Advisory Committee and SA Water's Customer Advisory Groups²⁸. One member of the CNC (Mark Henley) is a member of the Commission's Consumer Advisory Committee and hence was also a member of the CEP. The CEP met on several occasions in the last quarter of 2018 to prepare the CEP report, with Commission staff providing secretariat support; at those meetings briefings were provided by staff of both the Commission and SA Water.

²⁷ Guidance paper 8 p 4.

²⁸ SA Water has two such Customer Advisory Groups, for residential, and business customers. The groups are ongoing, and the members represent particular organisations.

The CEP report was finalised in December 2018 and published in early January 2019. The report discussed possible measures of success for RD20, stating that this would be assessed not only on the basis of outcomes for customers, but also on whether or not the process was assessed as being open, transparent and inclusive; the perspectives of the wider community – not just those of SA Water’s customers – should be sought through the process. The CEP report also called for SA Water to be much more transparent about its longer term plans. It put forward a list of priorities based on three issues that each of fifteen CEP members wished to see tested by the CNC. The CNC report noted (p 12) that the major issues could be grouped into four broad categories, viz concern over water price; greater community involvement in planning SA Water activities; concern over those struggling to pay water bills; and SA Water playing a more active role in developing policy for water use.

The CNC Chair subsequently met with the CEP to clarify members’ views and expectations.

In addition, SA Water provided a public response to the CEP report in July 2019 in which it classified the CEP priorities into three categories - those within the scope of RD20; those outside the scope of RD20; and matters that form part of ‘business as usual’ for SA Water – and summarised the manner in which it was dealing with each priority. It also indicated that it was prioritising matters in the first category.

Stakeholder feedback has been sought on the CEP’s role in the RD20 process.

CNC

The CNC had somewhat mixed views. The CNC Chair, in interview, noted the CEP view that the success of the process should be judged as much on the quality of the engagement as the actual outcome, but by the time the CEP report had been finalised, most of SA Water’s customer engagement had already been completed. He suggested that CEP members were, in general, poorly informed about SA Water’s plans and that SA Water hadn’t engaged closely with them on matters relating to its draft RBP, and hence they were not able to provide useful input to the CNC. He felt that CEP members needed to be much better informed than had been the case in RD20.

Another CNC member (Mark Henley, who was also a CEP member) emphasised that the process to produce the CEP report had been very rushed; with more time the report would have been more powerful and useful. He also noted that there was limited time for the CNC to engage with the CEP following receipt of the CEP report. On this point the Uniting Communities written submission notes that ‘a significant disappointment for us was the inability of the CNC to refer back to the [CEP] on a semi-regular basis and to test ideas and thinking that [was] re-emerging in the ‘negotiations’’.

CEP

CEP members also had mixed views, although they generally felt that there was value in having such a body involved in future regulatory determinations, and felt that RD20 was an improvement on past determinations in terms of customer involvement. One member (Heather Smith) stressed that ‘a two year effort’ was insufficient time for the process to work effectively.

CEP members noted that the meetings of the CEP were large (up to 25) and the scheduling of meetings presented a difficulty; a more planned approach to such organisational matters would have been preferred. It was also noted that a significant amount of complex material was required to be digested at the meetings ('plain English would have helped'), a problem that was compounded for some by the requirement to seek the views of the members they represented.²⁹

CEP members noted the diversity of views and backgrounds in the Panel; some needed more support than others in grappling with the RD20 issues. It was noted that management of a group of this size and diversity was complex, and that optimum performance would require developmental processes for the group, including understanding the perspectives of other members.

Some members were unsure as to how the CEP fitted in to the larger process and were not always clear about their role. It was generally felt that a longer term approach to a body such as the CEP would be helpful, ie members would be better positioned to contribute and ask questions once they had gained some experience. There appeared to be some confusion as to how the CEP fitted in with other consultative bodies (eg SA Water's Advisory Groups).

CEP members noted that SA Water had responded to the CEP report in July 2019. This was regarded as an initial response, and it was suggested that additional response from SA Water would have been valuable, perhaps delivered through SA Water's Customer Advisory Groups.

SA Water

SA Water has not commented directly on the role of the CEP in RD20. It has, however, noted in its written submission to the current review that the customer consultation arrangements established by the Commission through the Negotiation Forum, and which might be considered to include the CEP, did cut across SA Water's customer engagement activities which had been established for RD20.

SACOSS

SACOSS (a member of the CEP, but interviewed separately) commented that the CEP report had raised some valuable issues but overall was unlikely to have been useful to the CNC. It noted that the complexity and level of detail in regulatory determinations is such that considerable experience is required to understand the issues.

In a submission to the Commission in January 2020 regarding SA Water's draft RBP, SACOSS argued that the proposal from SA Water did not give adequate weight to the views expressed in the CEP report, and in particular that price was the major concern for consumers. In a written submission to the current review, SACOSS noted that resourcing and timing issues may have contributed to the CEP not being as influential on the CNC deliberations as had been expected. 'SA Water's response to the priorities identified by the CEP was welcome, but more specificity around how these identified priorities influenced or changed the RBP would have been appreciated'.

²⁹ This can be complicated. For example, Primary Producers SA represents such diverse bodies as Grain Producers SA, Livestock SA, Horticulture Coalition of SA, Wine Grape Council of SA, and the SA Dairyfarmers' Association.

5.2 SA Water's Customer Engagement

SA Water noted in its RBP submitted to the Commission in November 2019 that the customer engagement activities undertaken between 2017 and 2019 in preparation of the RBP were 'the most extensive we have ever undertaken, both in the breadth of methodologies we used and reach to South Australians across the state'. It stated that customers were engaged, both face to face and online about what matters most to them in the delivery of water and sewerage services. Willingness to pay surveys were used to identify improvement initiatives for inclusion in the RBP. A Customer Working Group assisted in challenging ideas, and was also used in the development of service standard proposals³⁰.

The Commission's Final Determination: Statement of Reasons acknowledged 'that SA Water's engagement practices in developing the RBP represent an important and material improvement on past practices in this area'. However, it stated that 'In the Commission's view, the process to date demonstrates that there is significant scope for SA Water to be more open and transparent with stakeholders on regulatory matters, and to genuinely take on board customer views and preferences at multiple stages of its business planning and delivery processes.'³¹ The Commission's conclusions on this matter reflected the outcome of the RD20 consultation processes, including advice from the CNC.

For the purpose of the current review, stakeholder views were sought on SA Water's customer engagement activities.

CNC

The CNC received clear direction from the CEP report that the RD20 process should be one in which SA Water would 'model best practice customer and community engagement, with its processes being open, transparent and inclusive'; and that 'SA Water should be providing more, earlier and transparent information about its operations and plans, particularly its longer term plans'³².

Chapter 6 of the CNC report reviewed SA Water's customer engagement, and broader community engagement, activities.

In considering SA Water's longer term plans, the CNC examined the Corporate Business Plan to 2028. It concluded that the document 'provides a sound framework for understanding SA Water's strategic directions, but it is pitched at a high level and gives very little guidance about priorities. Importantly, it is not obviously the product of an active program of customer engagement.'

The CNC also reviewed SA Water's customer engagement, and broader community engagement, activities with the purpose of establishing whether or not the proposals in the RBP were the product of what it described as 'a best practice customer engagement process'.

³⁰ The Customer Working Group involved 22 customers drawn from residential and business sectors, and metropolitan and regional areas; it met between March and October 2018 and provided input to SA Water's development of the RBP. It was disbanded following establishment of the CNC. One of its members (Meg Clarke) was appointed to the CNC.

³¹ Final Determination: Statement of Reasons p. 9.

³² CEP report, p.2

It indicated that the CNC would have preferred to have consulted more widely with those consumers who had been involved in the process. It noted that significant progress had been made by SA Water over the past two regulatory periods in engaging with customers, but that there appeared to be 'an undue emphasis on process rather than trying to ensure that customer priorities and preferences are being genuinely reflected in SA Water's business planning' (p 32).

The CNC report noted (p. 37) various positive features of SA Water's customer engagement activities, including the range of methodologies employed, the manner in which service standards were dealt with, and strong engagement with local communities on projects of direct relevance to those communities. However, the CNC report also noted that there was limited consultation with customers in setting agendas and discussion topics; it seemed that respondents were often being pointed towards preferred outcomes; and there was an over reliance on surveys (the CNC was particularly sceptical about the usefulness of willingness to pay surveys). It commented that consumers needed to be more involved at an early stage in the development of SA Water's plans and proposals.

The CNC report commented (p. 3) on present arrangements under which a proposal is considered to be prudent if customers want it and are prepared to pay for it. 'Specifically, the Committee suggests that only direct utility benefits should be counted and that, in assessing those benefits, SA Water should engage extensively with the customers affected and their communities'.

In a written submission to this review, the CNC Chair commented on 'the perception that SA Water is still at the 'inform/consult' end of the IAP 2 engagement spectrum³³ rather than the 'involve/collaborate' end. That is to say, SA Water's planning is not yet much influenced by consumer preferences.' In interview he indicated some uncertainty as to what constitutes best practice customer engagement and suggested that further investigation of this matter be undertaken.

The CNC Chair also stated in his written submission that it was necessary to consider two forms of customer engagement – with individual customers and with a representative body. He indicated his scepticism with much of the first form of engagement unless the matters being consulted on had a direct impact on the customers being consulted (eg service standards). A representative body needed to be established to consult continuously with SA Water on its regulatory business proposals and its longer term plans; however, it would be necessary to clarify the objective of that body.

One member of the CNC (Meg Clarke) was also a member of the SA Water's Customer Working Group and commented in the CNC report (pp 34-5) on the approach taken by SA Water to the use of this Committee. The CNC report contrasted the engagement of the Customer Working Group in proposing service standards, which produced clear directions, to that arising from the What Matters to You community survey, for which the Customer Working Group had several concerns. However, the CNC report concluded that 'overall the Group became a functional and committed reference/engagement group for SA Water.'

³³ International Association of Public Participation

The CNC report also highlighted (p 40) the need for customers to be able to comment on the aggregate impact of SA Water's proposed RBP on future water and sewerage prices and suggested that 'In designing future arrangements for community engagement, the Commission will need to ensure there is scope for such a process to occur'.

SA Water

In its response of April 2020 to the Commission's Draft Determination, SA Water strongly rebutted the position adopted by the Commission on SA Water's customer engagement activities, suggesting that several of the decisions in the Draft Determination were out of step with customer feedback and expressed willingness to pay. It noted that Commission staff had regularly observed SA Water's customer engagement activities and provided feedback on the process. It suggested that the Commission's own independent expert had reviewed SA Water's customer engagement processes and confirmed that they aligned with best practice in the Australian utility sector³⁴.

In its written submission to the present review, SA Water called for more 'appropriate balancing of various customer views. The RD20 determination placed greater weight on the view of the CNC over that of the more substantive feedback from customers received through SA Water engagement program. For example, customers overwhelmingly supported the addressing of water quality issues for regional customers, however this was not supported by the CNC or included in the determination.'

SA Water staff, during interview, reiterated points made in the organisation's response to the Draft Determination. SA Water had been working on customer engagement for RD20 for several years, and consulted with Commission staff on the matter at an early stage; the approach taken by the Commission in the Draft and Final Determinations conflicted with its earlier advice to SA Water; such misalignment between SA Water and the Commission on expectations regarding customer engagement needed to be avoided. They also commented on some overlapping between the customer engagement activities that SA Water had been using (particularly through its Customer Working Group) and those that were instituted by the Commission through the CNC.

SA Water staff noted that it was appropriate for SA Water to drive customer engagement in future regulatory determinations, and the framework for this needed to be settled with the Commission at an early stage and alignment maintained throughout the process.

On the question of the IAP 2 spectrum, SA Water staff indicated that the organisation was aiming towards 'collaborate'.

SACOSS

SACOSS noted in interview the need to distinguish those who were consumers of the services provided by SA Water (SA Water's customers), and those who represented such consumers (eg, SACOSS, or the CNC). SA Water's engagement activities were focused primarily on the former group, while the Commission's engagement activities were focused on the latter

³⁴ SA Water staff suggest that this is a reference to work undertaken by Marsden Jacobs and completed in February 2019.

group. It also observed that it appeared that the Commission had assumed certain consumer engagement responsibilities from SA Water during the RD20 process and that such a situation could lead to tension between the regulated business and the regulator.

SACOSS expressed the view that SA Water's customer engagement processes in RD20 were an improvement on previous determinations, although it noted that it had been unable to investigate SA Water's customer engagement survey results as deeply as it had wished, since the required data were not accessible.

However, SACOSS noted that there had been limited customer consultation by SA Water regarding the Zero Cost Energy Future (ZCEF) project as it was being planned (a view also expressed by some CEP members).

6 Rate of Return

As in any regulatory determination, there were various methodological (or technical) issues dealt with in RD20 about which SA Water and the Commission had differing views. Of these, by far the most significant was the method for determining the regulated rate of return on capital allowed for SA Water; it was the only such issue which received any substantive stakeholder comment during the current review of the RD20 process.

The Commission established the regulated rate of return using a real, post tax framework and a weighted average of the return on debt and equity. The Commission's Final Determination set a regulated rate of return of 2.96% in the first year of the four year regulatory period, declining to 2.42% in the last year; SA Water's RBP had proposed a first year rate of return of 4.38% declining to 3.83% in the last year of the regulatory period. The difference between the Commission's determination of the regulated rate of return and the proposal in SA Water's RBP (as modified in its response to the Draft Determination) was due almost entirely to a difference in the estimate of long term inflation expectations used to convert a nominal value to a real value³⁵. SA Water's inflation estimate was significantly lower than that of the Commission.

This review is concerned with process and not outcome. Furthermore its scope does not extend beyond gathering stakeholder views on process. The process for determining SA Water's regulated rate of return for the 2020-2024 regulatory period included the release of various Guidance papers (refer Table 3 of this report) to assist stakeholders in understanding the Commission's proposed approach. All Guidance papers were the subject of a consultation process, as was the Commission's Draft Determination of March 2020, which proposed a regulated rate of return a little lower than that of the Final Determination.

At the conclusion of the RD20 process, SA Water and the Commission continued to have significant disagreement on at least the methodology for estimating inflation expectations. The Commission argued in its Final Determination: Statement of Reasons that the method proposed by SA Water had major limitations, both conceptual and measurement problems³⁶, and 'if implemented, may lead to price and service outcomes that are not in the long term interests of customers'³⁷. In its response to the Draft Determination, SA Water, in commenting on the Commission's approach to determining the regulatory rate of return, suggested that 'long standing errors in the methodology have been exposed by unprecedentedly low rates of return' and that 'the Commission's approach to regulatory rates of return is out of step with emerging regulatory practice'.

Estimating inflation over a ten year period is a matter of significant complexity at any time, made more so for RD20 given the high degree of economic uncertainty, particularly associated with the advent of COVID-19.

³⁵ Refer Table 7.2, Final Determination: Statement of Reasons (p 210).

³⁶ Refer Final Determination: Statement of Reasons (p 224).

³⁷ Refer Final Determination: Statement of Reasons (p 278).

SA Water

SA Water, in its written submission to the review, noted that the Guidance papers were very useful and urged that, for future regulatory determinations, greater efforts be made to resolve the methodology for determining the regulated rate of return earlier in the process. It made no explicit comment on the process for estimating inflation. Guidance papers 5 (November 2018), 6 (June 2019), 7 (June 2019) and 9 (December 2019) dealt with various aspects of the methodology for determining the regulatory rate of return; Guidance paper 6 dealt specifically with the estimate of expected inflation. SA Water made submissions at various points on these Guidance papers.

SA Water staff noted in interview that the Guidance papers dealing with the regulatory rate of return methodology, while subject to consultation, did not constitute a review of the methodology, the Commission's position being that the determination process itself would be the vehicle for resolving the methodology.

In November 2018 SA Water, in commenting on Guidance paper 5, suggested that 'it prejudices the methodology to be used for the rate of return and prevents genuine negotiation between SA Water and the Customer Negotiation Committee around this very important element'. In Appendix 5 (Inflation) to Guidance paper 5, the Commission noted that 'No inflation forecasting method is empirically perfect, so the Commission is open to the merits of any methods that stakeholders and SA Water propose through the consultation and negotiation process'.

On the question of negotiation between SA Water and the CNC on the parameters that combine to form the rate of return, SA Water has argued, in its written submission to the current review, that rate of return is a matter that customers are not in a position to influence.

CNC

The CNC report was finalised by October 2019; Chapter 15 dealt with the regulatory rate of return. It observed the debate regarding expected inflation without commenting on process, noting (p. 84) that 'the Committee cannot add value to the debate about the best measure for forecasting inflation but is happy to see the matter considered'.

In a Postscript section of the CNC report (p 40), comment is made on a delay by SA Water in settling on its preferred method of estimating inflation expectations. The CNC report urges the Commission to 'adopt the method of estimating future inflation which it considers will produce the most accurate estimate, regardless of its immediate impact on SA Water's revenues and prices. Given the very large implications for customers of a changed approach, we make the additional observation that the case for such a change would need to be convincing'.

In interview, the CNC Chair did note that the issue regarding regulatory rate of return was driven in part by a choice between price stability versus low prices (refer also discussion in CNC report Chapter 15).

Department of Treasury & Finance

The Department of Treasury and Finance (Stuart Hocking) was interviewed for this review. It noted that Commission staff had been very forthcoming and responsive during RD20 in making themselves available for discussions and sharing information. It also noted that the context for RD20 was challenging, particularly given the prevailing economic circumstances.

However, there was a concern about the approach taken by the Commission to the issue of expected inflation for the purpose of determining the regulatory rate of return. While there is no 'right or wrong' answer to this issue, the Department felt that it had valid concerns with the Commission's approach ('inflation expectations didn't match the economic circumstances'), and had commissioned the SA Centre for Economic Studies to prepare a report on the issue for consideration by the Commission. While Commission staff listened to the arguments, there seemed to be a lack of preparedness to step outside the 'accepted regulatory model' and to consider the economic sense of what it was proposing.

The Department noted that the Commission's Guidance papers were very useful and suggested that it might have been worthwhile if they had been supplemented by workshops to more fully explore the issues in each Guidance paper. It was acknowledged that the Department could have engaged rather earlier with the Commission on the regulatory rate of return methodological issues.

Other Stakeholders

Jamie Hollamby noted the long standing nature of the inflation debate between SA Water and the Commission and suggested that the Commission had adopted an economic theorist view that was not aligned with the marketplace. Such methodological matters should be resolved much earlier in future regulatory determinations.

SACOSS in its written submission noted the central role played by the rate of return in delivering lower prices to consumers in RD20. Therefore, despite the complexities inherent in the rate of return methodology, SACOSS stressed the importance 'for consumers to be consulted and involved in the process of determining the methodology.' SACOSS also called for a specific review by the Commission into the rate of return methodology, if possible divorced from the SA Water regulatory timetable.

7 Regulatory Co-ordination

The Charter establishing the RWG stated that its purpose was to provide a forum for the economic, environmental, health, social and technical regulators to co-ordinate their efforts to achieving positive outcomes for the South Australian community through their combined regulation of SA Water. It would introduce greater transparency to the community regarding each regulator's expectations and roles for SA Water, and the willingness of each to work together in delivering those outcomes. It would also help to inform the CNC as it challenged and negotiated with SA Water regarding its RBP.

The Charter stated that the RWG would develop a statement of the outcomes that its members expected SA Water to achieve over the 2020-2024 regulatory period.

Discussions were held, both with members of the RWG and with other stakeholders, regarding the role of the RWG during RD20.

RWG

The Office of the Technical Regulator (**OTR**) and the Environmental Protection Agency (**EPA**) made submissions during the RD20 process, in both cases in response to the release of SA Water's RBP and in response to the Commission's Draft Determination. The EPA submissions noted that the establishment of the RWG had enabled the EPA and other regulators 'to provide robust and effective input' to the Commission.

The RWG discussions for this review involved representatives from Department of Health & Wellbeing (**DHW**), EPA, OTR and Department of Environment and Water (**DEW**). There was general agreement that the RWG functioned usefully as a vehicle for communication between the regulators. DHW suggested that the co-ordination between regulators was better in RD20 than in the previous determination, but that the individual regulators would need to have their separate discussions with SA Water about proposed projects.

There was also general agreement that the interaction between SA Water and the RWG could be enhanced. Several members considered that the RBP was too high-level to enable the ready identification of proposed projects that were relevant to their responsibilities; the CNC report had been more useful in that respect.

DHW stated that it valued the meeting with the CNC Chair. A concern was expressed that the CNC Chair had spoken with some of the regulators and not others. One of the OTR representatives stated that the CNC Chair had not requested a meeting with the OTR. The EPA representative suggested that the RWG seemed to be focussed on information flows to the Commission, and that it should become a more open group.

There was some discussion of the Commission's treatment of recycled water projects. Two had been considered in RD20 - the Northern Adelaide Irrigation Scheme and the expansion of the Glenelg Adelaide Pipeline Scheme, the latter project not being supported in the Final Determination. The EPA representative suggested that the EPA needed to better understand the process by which the opinions of the EPA and CNC were considered by the Commission in determining whether or not it would support such projects, and what actions SA Water would

need to take, particularly in gaining customers, for additional recycled water projects that might be considered in RD24. The DEW representative noted a link between recycled water projects and arrangements for customers to gain access to SA Water's networks.

CNC

The CNC report noted (p 10) that the RWG undertook to ensure that any minimum service standards or requirements were clearly communicated to SA Water and the Negotiation Forum prior to the formal meetings of the Forum, and also commented (p 12) that the Committee met with DHW, EPA and DEW during the first half of 2019 to discuss matters relevant to its consideration of the RBP.

In interview, the CNC Chair suggested that the Committee had had limited guidance from the RWG and had therefore met with individual regulators as the need arose. Discussions with EPA focused on greater use of recycled water - the Northern Adelaide Irrigation Scheme (CNC report p 48), environmental improvements at wastewater treatment plants (p 73) and the Glenelg Adelaide Pipeline Scheme (p 75) - and were valuable. Those with DHW focused on a proposal to convert the metropolitan water supply network from chlorine disinfection to chloramine disinfection, a move strongly supported by DHW (p 63).

The CNC Chair suggested that a more concerted effort was needed to gain input from each regulator and from the RWG as a whole.

SA Water

SA Water staff, in interview, expressed the view that the RWG was a good innovation, but queried as to whether it had achieved its full potential, suggesting that its contribution in the latter stages of the RD20 process had diminished. They expressed some surprise that two members of the RWG had felt it necessary to make submissions to the Commission during the RD20 process, independently of the RWG.

The SA Water written submission to the present review suggested that wider regulatory involvement 'in RD24 would provide a more robust determination' in three ways: greater understanding of the regulatory obligations and resultant needs for SA Water investment; a role in reviewing the RBP and advising the Commission and customer representatives; and increased visibility of the standards that SA Water is required to meet and performance against those standards.

SA Water referenced the Commission's determination on the expansion of the Glenelg Adelaide Pipeline Scheme as evidence of the need for increased regulatory involvement: 'For RD24 clearer guidance is required on the level of support and evidence required from other regulators to [ensure] inclusion in the determination'. SA Water staff, in interview on this matter, indicated that while SA Water itself understood its regulatory obligations, they were concerned that the Commission was 'not fully briefed' on these obligations.

8 Role of Government

As noted in section 2 of this report, the State Government is an important participant in the regulatory determination process for SA Water. It is the owner of SA Water; it sets policy for the water sector; and has ministerial powers of direction under the Public Corporations Act 1993 and the Water Industry Act 2012 that impact on the Commission's conduct of such regulatory determinations. In addition, and as discussed in the previous section, various regulatory agencies specify standards and other requirements to be met by SA Water.

The ministerial powers of direction were used extensively during the RD20 process, as detailed in Table 2 of this report. Directions issued in late May 2020 have been the subject of considerable stakeholder comment³⁸.

A Pricing Order issued by the Treasurer on 25 May 2020 reduced the real value of SA Water's assets used in the provision of drinking water retail services by about 6.7%. It also precluded two proposals in the Draft Determination, one of which had provided for annual updates to the regulatory rate of return during the 2020-2024 regulatory period, the other of which had established the potential for revenues for contingent projects to be included within the regulatory period.

In addition a direction issued by the Minister for Environment & Water on 28 May 2020 required SA Water to undertake specified activities (with associated costs and subsidies) during the regulatory period. Several of these activities (eg, State-wide pricing with Government contribution) continued existing requirements on SA Water. Others were new, and some of these related to proposals that had been excluded in the Draft Determination (eg upgrading the water supply to potable water for SA Water customers in certain regional areas).

As previously noted, the RD20 process, and in particular the Negotiation Forum arrangements, were based in part on the regulatory arrangements for Scottish Water. A key aspect of those arrangements is the clear delineation of the role of the Scottish Government in the overall process. A report prepared by SACOSS, based on a study tour of the UK to investigate regulatory approaches in the water sector, discussed the importance of such delineation³⁹. The so-called 'two silos' approach clearly defines and separates the policy setting role of Government (including required outcomes such as water quality, compliance with European Union Directives, regional policy, fairness and investment in facilitating economic growth, as well as Principles of Charging) from the determination of prices and service outcomes.

The Negotiation Forum in RD20 operated with an understanding of the State Government's policy settings for the water sector, albeit that there may have been uncertainty regarding some of the requirements imposed by other regulators.

Stakeholder comments on the role of Government in RD20 were sought.

³⁸ Refer Final Determination: Statement of Reasons, section 2.2.9, pp21-24; also section 6.6, pp 132-133.

³⁹ Refer 'Consumer Engagement and Regulatory Determinations: Report on a 2018 United Kingdom Study Tour', October 2018, available from the SACOSS website at sacoss.org.au

CNC

The CNC report in its consideration of the RBP, identified several issues which raised strategic questions where further clarification of Government policy would be useful or necessary, at least for future regulatory determinations.

- The first of these was State-wide pricing, whereby all customers connected to the SA Water network are charged the same price regardless of location (CNC report pp20-24). At one time this was achieved through a Government grant which served to equalise prices in metropolitan and regional locations; the grant now operates to reduce prices overall, so that uniform State-wide pricing is achieved by cross subsidies between customers. The CNC report suggested that the policy matter for Government concerns which regions should be subsidised in order to deliver the goal of uniform State-wide pricing.
- The second issue, also impacting delivery of services to regional areas of the State, concerns a proposal in the RBP to supply potable water to 650 locations that currently receive only a non-potable water supply from SA Water. The CNC did not support this proposal given the very high cost and limited benefits to the small number of customers involved (CNC report pp 65-67). It recommended that, prior to SA Water unilaterally proceeding with this proposal, the policy question of supply of water to remote townships be considered by Government, if only to develop 'an orderly set of priorities'. The Commission's Draft Determination also did not support this proposal. Subsequently, as noted above, a ministerial direction was issued to SA Water requiring that approximately half of the 650 locations be supplied potable water; the direction specified necessary expenditure for this purpose⁴⁰.
- The third issue concerns the extent of involvement of customers in future SA Water regulatory determinations (p93). In particular, if the purpose of such involvement was to enter into a formal agreement between the customers and SA Water, then Government would need to be closely consulted.

The CNC report was finalised well in advance of the Government interventions in the process in May 2020. The matter of such late interventions was discussed with CNC members during this review. One CNC member (Mark Henley) noted that 'regulatory processes are rational and always in tension with political processes' and that awareness of Government policy boundaries was very important.

Another CNC member (Meg Clarke) stressed that the Government needed to state upfront what was non-negotiable so that the time of those involved in the negotiation process was not wasted. The CNC Chair noted that the proposal for the provision of potable water to 650 regional sites was a good example of this situation – it was difficult for consumers to provide input on the proposal when the policy framework was unknown.

Other Stakeholders

Various stakeholders have commented on the use of ministerial directions in the RD20 process, both the scope and timing of those directions.

⁴⁰ Direction from the Minister for Environment and Water under s. 6 of the Public Corporations Act 1993.

SACOSS commented that the ministerial directions requiring projects to be undertaken which had not been supported by the CNC nor by the Commission in its Draft Determination were disappointing. They undercut the regulatory process, and consequently lead to a diminution in stakeholder confidence in that process. They would have the effect of increasing prices. If consumers are to have confidence in the process, they need regulatory certainty. It would be necessary to ensure greater clarity around the rules at an early stage in the process, and in particular to be clear about the matters that are in scope for negotiation.

In its written submission, SACOSS re-emphasised its concern about the implications of ministerial directions for the regulatory process. It noted that the directions 'operate to require the inclusion of unscrutinised capital expenditure allowances for multiple water infrastructure projects in the Final Determination, significantly impacting the amount of SA Water's allowed revenue for 2020-2024.' SACOSS suggested that such a practice 'raises questions about the integrity of the regulatory process and the meaningfulness of lengthy customer engagement, consultation and input from the CNC'.

SACOSS, in its written submission and in interview, also raised the possibility of independent scrutiny by the Commission of SA Water's tariff structures. Since the advent of independent economic regulation for SA Water in 2012, the Commission's role has been confined (by means of a pricing order issued by the Treasurer) to a consideration of revenue caps for SA Water⁴¹. Tariffs are set by SA Water, for approval by the Government, consistent with the Commission's approved revenue caps. The effect of this confinement of the Commission's water regulatory role is that, since 2012, SA Water's tariff structures have been excluded from independent scrutiny and reporting against relevant principles of the National Water Initiative. SACOSS has suggested that 'the preparation [by SA Water] and approval [by the Commission] of a Tariff Structure Statement could form part of the regulatory process (as is the case for energy networks)'⁴².

A CEP member (Heather Smith) commented that the role of Government in the process needed to be more transparent, while another (Andrew McKenna) expressed concern about the large number of directions issued late in the process.

Similarly, within the RWG, some concern was expressed about the use of ministerial directions, with one OTR representative also noting that the CNC report had raised important issues of Government policy.

⁴¹ For RD20, refer clause 5 in the Pricing Order issued by the Treasurer on 28 October 2018.

⁴² A similar suggestion was made by SACOSS in its submission (pp 5-6) of January 2018 in response to the Commission's Draft Framework and Approach paper for RD20.

9 The RD24 Process

9.1 Stakeholder Views

In commenting on the RD20 process, stakeholders have in some cases also presented their views regarding the process for RD24. This section of the report summarises such views by stakeholder, beginning in each case with a restatement of the main issues concerning the RD20 process raised by each stakeholder. There is no suggestion from stakeholders that customer involvement should be wound back to the level which prevailed in RD16. However stakeholder feedback on RD20 has revealed various issues which suggest the need for adjustment to the process for future determinations. The main issues concern stakeholder alignment, timing and resourcing issues, customer challenge vs negotiation, clarity regarding outcomes, and an agreed framework for customer engagement by SA Water.

IPA

The IPA concluded (refer section 3.1 of this report) that the Negotiation Forum process in RD20 had been successful. This conclusion was based on an assessment of outcomes against the specifications of the Charter, and in particular on the quality of the CNC report. The IPA noted that, while genuine negotiations between the CNC and SA Water had not occurred, nevertheless the CNC did effectively challenge SA Water's proposals.

The IPA report commented on future processes, assuming the same governance structure as for RD20. It indicated that increased time should be allowed for the Negotiation Forum, particularly if effective negotiations were to occur. It proposed a three-stage process: the first stage would involve the CNC seeking to understand SA Water's business and challenging the proposed business plan; SA Water and the CNC would then negotiate around an amended business plan; finally, the business plan, further amended following the negotiations, would be submitted to the Commission for determination.

CNC

The CNC has expressed various concerns regarding the RD20 process, while acknowledging the initiatives of SA Water and the Commission in facilitating a far greater level of customer involvement in the regulatory process than RD13 and RD16.

Its concerns (refer, eg, sections 3.3 and 5.2 of this report) relate primarily to the need for clearer understanding of the objectives, role and outcomes of the Negotiation Forum, certainly between members of the CNC, but presumably amongst all stakeholders; allowing significantly more time for the process; facilitating earlier and concentrated focus on customer engagement by SA Water; and providing for genuine negotiation about the aggregate impact of the RBP if that is what is intended.

The CNC report devoted its final Chapter (17) to consideration of an improved process for customer engagement in RD24. The CNC report extols the virtues of the Scottish model in the manner in which it engages with customers. It notes that the latest iteration of the Scottish model (being applied to the 2021-2027 regulatory period) is established through an Agreement between Scottish Water, the Water Industry Commission and the consumer

advocacy body Citizens Advice Scotland, and involves a well-resourced Customer Forum working with Scottish Water to develop and agree a business plan which reflects customer priorities and is consistent with certain directions issued by the Water Industry Commission and with Ministerial Objectives and a Statement of Policy issued by the Scottish Government. The Water Industry Commission would be 'minded' to issue a determination for the regulatory period which reflects the agreed business plan.

The CNC report suggested that the Scottish model could be readily translated to South Australia provided certain fundamental issues were resolved. These include the desirability of having a customer body (similar to Citizens Advice Scotland) involved (through a formal agreement between SA Water, the Commission and that body) in broad oversight of the regulatory determination process; the CNC report suggested that SACOSS might be such a body. In addition, the nature of the body (Customer Forum) to engage with SA Water (in RD20 the CNC) would need to be resolved, including its size (the CNC report suggested between five and seven members), independence of the Chair, and adequate resourcing. The process of engagement of the Customer Forum with SA Water would need to commence early in each regulatory period. Finally, the precise level of influence that the Customer Forum would have over the business plan (eg, negotiated agreement or something less) would need to be established; the CNC report suggested that the Government would need to be involved in consideration of that matter.

CNC members made further observations on an improved process during interview, as did the CNC Chair in his written submission to this review. The CNC Chair noted the need for the regulatory determination process to be sufficiently continuous so as to be consistent with the ongoing nature of SA Water's planning process. He suggested that a representative body of consumers needed to be established for the purpose of engaging with SA Water both on its RBP and its longer term plans; this body should not be too large or it would be cumbersome to convene, and its members needed to be more knowledgeable than those of the CEP of RD20. He speculated that a subgroup of this body might form the negotiation group (CNC of RD20). He emphasised the need for the negotiation group to be well resourced, with the ability to access necessary technical expertise.

The CNC Chair in interview expressed some reservation about the input to the CNC's deliberations from the CEP and suggested that members would need to be better informed about SA Water's operations in future determinations. Similarly the CNC Chair expressed some reservation about the contribution of the RWG in RD20, suggesting that a more concerted effort was needed to gain input from each regulator and from the RWG as a whole

SA Water

The views of SA Water on the RD20 process have been outlined in sections 3 – 7 of this report. SA Water staff, in interview, were asked as to their view regarding the overall process of RD20. While the importance of increasing the role of customers in the regulatory process was acknowledged, SA Water staff highlighted what they believed to be major flaws in the RD20 process, including the changing nature of the process during the regulatory period (with resultant time pressures), insufficient direct engagement with the Commission, and the failure (as they perceived it) of the CNC model.

SA Water in its written submission to the review made several recommendations to improve the process for RD24, based on 'lessons learnt' from RD20, including:

- Open and transparent engagement between the Commission and SA Water, including maintaining direct ongoing dialogue between the two organisations throughout the entire determination process.
- Early setting of timelines and guidance for the process, including guidance for customer engagement; setting service standards measures; changes to the Water Retail Code; methodology for setting the rate of return; updates to the revenue model; and revenue adjustment mechanism.
- If a CNC group is to be established the Commission should articulate its expectations for outcomes and assurance, but should allow SA Water to run the process.
- Design a customer engagement process that adequately balances all customer feedback.
- Greater involvement of other regulators in the process to clarify regulatory obligations and resultant needs for SA Water investment.
- Final determination to be released sufficiently early (suggested March 2024) to allow reasonable time for the setting and communication of customer prices.
- Facilitate greater customer understanding of the process through customer-oriented structures, language and narrative in determination documents and public communication materials.

SA Water recommended that, if a customer challenge/negotiation process (involving a CNC group) is to be established for RD24, the design of the process should consider:

- Establishing the group sufficiently early in the overall process so that it can be consulted in the design of the customer engagement program; gain an understanding of the complexity of SA Water's business; and influence the development of SA Water's business plans.
- Ensuring that members are representative of the customer base and can add value to the planning process.
- Clearly defining the scope of the group's activities.
- Providing the group with an opportunity to engage with the wider customer base and representative groups.
- Increasing access of the group to technical expertise, including from SA Water, the Commission and other regulators.

SA Water staff, in interview, commented that, if a CNC group is to be established, its role should be one of challenging, rather than negotiating, SA Water's proposals.

SACOSS

SACOSS in its written submission to this review commented favourably on the role of the CNC in the RD20 process, both in terms of challenging SA Water's proposals and in producing a report that was useful to consumer groups in evaluating SA Water's proposals. Nevertheless, it expressed doubt that the RD20 process had met the expectations for it that were expressed in the Framework and Approach paper of July 2018. It acknowledged the importance of timing issues in constraining the achievement of expected outcomes, and suggested that the

process could have worked better if the consumer voice had been involved much earlier and had access to more information.

SACOSS did not express a view on whether or not the Negotiation Forum should continue. In interview, SACOSS staff expressed caution in expecting that genuine negotiation would be possible, but that any challenge/negotiation arrangement should commence as early as possible in the process.

It recommended that, should the Commission determine to continue the Negotiation Forum for RD24:

- More time be allowed for the negotiation process.
- More transparency and greater public access be provided to SA Water's expenditure proposals; such access should be provided much earlier in the process to allow for appropriate testing of the information.
- During the negotiation process, the CNC could make its expert analysis and testing of proposals publicly available through discussion papers published on the Commission website.
- The Negotiation Forum process should not replace traditional formal consultation processes (eg on the RBP and the Draft Determination), and sufficient time (> four weeks) should be provided for such consultation.

SACOSS, in its written submission, suggested that the preparation of a Tariff Structure Statement by SA Water for approval by the Commission form part of the future regulatory process.

In interview, SACOSS stressed the importance of dialogue between the Commission and Government regarding better alignment of the Government's role in the regulatory process with those of other stakeholders.

SACOSS also noted in interview that it was open to the possibility of playing a leadership role in representing customers in future regulatory determinations, as suggested in the CNC report, but that the resource implications for SACOSS of such a role would need careful consideration.

Uniting Communities

Uniting Communities, in its written submission, strongly endorsed the approach adopted by the Commission for the RD20 process, as outlined in the Framework and Approach paper of July 2018, and suggested that the outcome of lower SA Water prices for consumers was in no small way due to that approach. Its comments regarding shortcomings in the process are consistent with those of the CNC.

Uniting Communities suggested that each of the new elements of the regulatory process introduced in RD20 should be retained for RD24, although it suggested that the CNC should be closer in its structure and role to the Scottish Customer Forum. The main changes that it suggested for RD24 included:

- CNC should have a longer term (ongoing) role, similar to that of the Scottish Customer Forum model. Governance oversight for the extended CNC would be provided by the Commission, SA Water, and SACOSS. CNC should have the capacity to link back to the CEP and have access to support from the Commission.
- The regulatory process should start much earlier, at least two years prior to SA Water submitting its RBP to the Commission, including CNC, CEP and preparation of, and consultation on, Guidance papers. SA Water would provide timely induction to its operations for CNC and CEP members.
- On a six monthly basis for the two years prior to the RBP being submitted to the Commission, all parties to the process (CNC, CEP, RWG, SA Water, and Commission) should meet to exchange information about relevant matters and to consider possible overlap.
- The Commission would brief the negotiating parties (SA Water and CNC) at the outset of the negotiating process about expected outcomes and process, with all parties (including IPA) agreeing on these matters. SA Water would need to be receptive to open negotiations with the CNC prior to gaining Board approval for its RBP.

Other Stakeholders

Jamie Hollamby commented on the applicability of the Scottish model to South Australia. He noted that the participants in the Scottish process were closely aligned; achievement of such alignment in South Australia was likely to be more difficult. For example, Scottish Water is a not-for-profit enterprise and pays no dividend to the Government. He suggested that the political environment for water regulation in South Australia is very different to that of Scotland.

Heather Smith in her written submission proposed a list of improvements that SA Water could make to enhance stakeholder participation in the regulatory process and thereby improve the quality of decision making. She stressed the need to expose the organisational goals to scrutiny, and to ensure that knowledge of stakeholder issues and concerns influences the earliest steps in analysis, option generation and decision making.

In interview, Heather Smith advocated continuation of a CNC body which would have both a challenge and negotiation role – ‘all issues are ripe for challenge; not all issues lend themselves to negotiation’. On the question of size of the CNC, she suggested 3 – 5 members, but that the more relevant question was ‘how many skills should it cover/ and knowledge bases/ and relationships/networks?’

CEP members expressed general support for the continuation of the RD20 arrangements (CEP providing advice to CNC) into RD24, and strongly supported the increased role for consumers that had been initiated for RD20. There was some support within the CEP for increasing the number of CEP representatives on the CNC (one in RD20).

RWG members also expressed general support for the continuation of RD20 regulatory co-ordination arrangements.

9.2 Synthesis

This final section of the report seeks to synthesise as far as possible the views of stakeholders regarding the RD24 process. While there are important differences amongst stakeholders about the nature of that process, there are in fact many common themes and it is these that are presented here.

There is substantial agreement amongst the parties consulted in the preparation of this report on the following principles:

- The regulatory determination process needs to be ongoing in the same way as SA Water's planning processes are ongoing, with customer engagement a central feature of both processes.
- A representative customer body (referred to as here as CEP) should engage with SA Water on both its longer term plans and on its regulatory business proposals.
- SA Water, its customers (represented by an agreed customer advocacy body), the Commission and the Government should be aligned as far as possible on key aspects of the regulatory determination process.
- For any specific regulatory determination
 - The process should commence early in the regulatory period;
 - The framework for SA Water's customer engagement activities should be agreed early in the regulatory period;
 - Various matters (eg, rate of return methodology, service standards) should be reviewed and finalised as early as possible in the regulatory period, in advance of the formal determination; and
 - Traditional public consultation processes should be continued.
- If a customer challenge (or negotiation) arrangement is to continue, with an appointed customer challenge body (referred to here as CNC):
 - Its framework should be agreed between the relevant parties (SA Water, Commission, CNC) as early as possible; depending on the exact role of the CNC, the Government would also need to be a party to the agreed framework;
 - All parties to the arrangement should be clear about the roles and expected outcomes of the process;
 - The CNC should have strong links to the CEP, including through overlapping membership;
 - The CNC should be well resourced, both in technical expertise and time commitment from its members; and
 - Governance oversight of such an arrangement should be provided by at least the Commission, SA Water and an agreed customer advocacy body.
- Regulatory co-ordination is important and a formal body such as the RWG should be continued.

Most stakeholders consulted in this review supported continuance of a CNC arrangement. SA Water did not directly express a view on this matter. There was limited support for the CNC to have a genuine negotiation role (and certainly not without Government support); rather, the role should be one of providing customer challenge to SA Water's proposals.

There was no strong view expressed on the preferred size of the CNC, nor on its relationship to a representative group of customers (CEP) to assist the CNC in determining customer views on priorities and preferences. However, a CNC with five members would not be inconsistent with stakeholder views; nor would a CEP formed from the Commission's Consumer Advisory Committee and SA Water's Customer Advisory Groups.