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# SA Water Regulatory Determination 2024: Framework and Approach

Consultation on the Framework and Approach

February 2021

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## Request for submissions

The Essential Services Commission (**Commission**) invites written submissions on this paper by **Friday, 26 March 2021**.

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

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

Responses to this paper should be directed to: **SA Water Regulatory Determination 2024: Consultation on the Framework and Approach**

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## Glossary of terms

Term	Description
Commission	Essential Services Commission, established under the <i>Essential Services Commission Act 2002</i>
ESC Act	<i>Essential Services Commission Act 2002</i>
SA Water	South Australian Water Corporation
SAWRD13	SA Water Regulatory Determination 2013
SAWRD16	SA Water Regulatory Determination 2016
SAWRD20	SA Water Regulatory Determination 2020
SAWRD24	SA Water Regulatory Determination 2024
WI Act	<i>Water Industry Act 2012</i>

## Executive summary

The Essential Services Commission (**Commission**) is a statutory authority established as an independent economic regulator and advisory body under the *Essential Services Commission Act 2002* (**ESC Act**).

The Commission has an economic regulatory responsibility in the water, sewerage, electricity, gas, rail and maritime services, and a general advisory function on regulatory and economic matters. The ESC Act and various industry Acts together provide the Commission with those regulatory and advisory powers and functions.

Under the ESC Act, the Commission's primary objective is the:

*'... protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services'*

The Commission is committed to continuously improving its approach to the economic regulation of the water and sewerage services provided by the South Australian Water Corporation (**SA Water**), in line with the above objective. In doing so, the Commission recognises the need for regulatory certainty in a long-term industry such as the water sector but also that, as technology, business practices and regulatory practices change for the benefit of consumers, so too should the Commission's economic regulatory regime so that it captures those consumer benefits.

The Commission completed the current regulatory determination, SA Water Regulatory Determination 2020 (**SAWRD20**), in June 2020.<sup>1</sup> The Commission will make a new regulatory determination to apply from 1 July 2024 to 30 June 2028: SA Water Regulatory Determination 2024 (**SAWRD24**).

Reflecting on the lessons learned from previous determinations, the Commission is moving to put in place the Framework and Approach for the next determination earlier than it has in the past. In particular, there was strong stakeholder feedback on SAWRD20 that the regulatory system needs to move to operate on a more continuous basis, with the four-yearly regulatory determinations being 'check points' rather than stand-alone events.

A desire was also expressed for there to be opportunities for greater consumer engagement and challenge earlier in the review process, before key decisions have been made. The Commission's view is that consumer input into the drinking water and sewerage retail services provided by SA Water, in the right ways and at the right times, will assist to deliver those services at the lowest sustainable prices for the desired service levels.

In any form of participatory decision-making process, it is important to be clear with stakeholders as to the level of influence they can and will have over ultimate decisions. To date, discussions with stakeholders through the SAWRD20 ex post review process have considered the question of whether the Commission should expect customers, customer advocates and other stakeholders to 'negotiate with' SA Water or instead to 'challenge' its thinking and proposals.

Through its regulatory determinations, the Commission makes a series of decisions on behalf of all customers. The Commission is assisted in this where it has robust evidence from a diverse range of sources. Customers, customer advocates and other stakeholders play a vital role in providing, assessing and challenging the evidence put before the Commission for its consideration.

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<sup>1</sup> SA Water Regulatory Determination 2020, June 2020, available at <https://www.escosa.sa.gov.au/projects-and-publications/projects/water/sa-water-regulatory-determination-2020>

However, in each regulatory determination, the Commission remains the ultimate decision maker; any consideration of the role of customers, customer advocates and other stakeholders in the SAWRD24 process must clearly take that fact into account.

At this point in time, and having regard to stakeholder feedback from SAWRD20, the Commission considers that the most appropriate role for customers, customer advocates and other stakeholders in the SAWRD24 process is to 'challenge' SA Water, rather than to a 'negotiate' with it.

This recognises the power imbalances between the parties and impracticalities of the concept of a 'binding' negotiation in circumstances where the Commission is a statutory decision maker which must have regard to all views and evidence put to it—not just the evidence arising from a negotiation process. The options presented in this paper are based on this starting position; however, as always, the Commission welcomes stakeholder views on alternative positions and considerations.

It is also proposed that the SAWRD24 process should start to make a more deliberate shift to a long-term, continuous and consultative approach to the regulation of SA Water's retail services. This includes the Commission itself raising—to SA Water and to other stakeholders—issues that it considers important as they arise throughout the regulatory process, rather than waiting until it releases its formal decision papers.

This will benefit consumers by addressing, over time, the challenges in the existing economic regulatory processes. Those include:

- ▶ the information asymmetries between SA Water, the Commission and other stakeholders
- ▶ the lack of involvement of customers early enough in the decision-making process to have a meaningful impact on issue identification, prioritisation and option assessment
- ▶ the limited time to resolve issues identified in SA Water's Regulatory Business Plan once developed, and
- ▶ the short-term focus of a four-year Regulatory Business Plan without a clear link to SA Water's long-term investment and asset management plans.

The Commission's aim for SAWRD24 is to address those issues by building on the enhancements made to its review process for SAWRD20. The primary difference will be a greater emphasis on earlier engagement on regulatory issues, by both SA Water and the Commission, before detailed solutions have been developed. The ability to regularly discuss and challenge SA Water's investment priorities as they arise will give stakeholders more meaningful input into the process of developing and considering solutions.

SA Water will also be expected to provide greater transparency around its long-term plans throughout the SAWRD20 regulatory period, in line with the requirements of the SAWRD20 Monitoring and Evaluating Performance Framework.<sup>2</sup> Successful implementation of that framework will allow stakeholders to assess and challenge the expenditure proposed for the SAWRD24 period, with a better understanding of how those proposals fit into SA Water's longer-term plans.

The first step in the Commission's Regulatory Determination process is to establish the Framework and Approach that will apply to SAWRD24. The Framework and Approach will set out the intended outcomes, strategies, overall process, governance arrangements and timetable. It will also include a list of subjects and topics that will be dealt with in detail in subsequent Guidance Papers.

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<sup>2</sup> SAWRD20 Monitoring and evaluating performance framework, final report, January 2021, available <https://www.escosa.sa.gov.au/projects-and-publications/projects/water/sa-water-regulatory-determination-2020-monitoring-and-evaluating-performance/monitoring-evaluating-performance>

The purpose of this consultation paper is to invite stakeholder feedback on key elements of that Framework and Approach. Feedback received to date has identified three specific elements of the overall review timetable that require further consideration:

- ▶ the nature, scope and timing of SA Water's draft Regulatory Business Plan (refer Chapter 3)
- ▶ the nature, scope and timing for involving customers in the review process (refer Chapter 4), and
- ▶ the scope of issues to be dealt with in the Guidance Papers (refer Chapter 6).

Importantly, while this paper presents options for consideration and comment, it does not represent the Commission's final views or positions on matters raised.

Stakeholders are invited to discuss or provide submissions on this consultation paper by no later than **Friday, 26 March 2021**. The Commission welcomes discussions with stakeholders on any of the matters raised in this paper or on any related matters during the consultation period.

Following consideration of the issues raised in submissions, the Commission will release a Final Framework and Approach paper in May 2021. That paper will include the timeframe and key milestones for the SAWRD24 review process. It will also include further details on the scope of the initial set of Guidance Papers, to be released through to December 2021.

# 1 Background and introduction

## 1.1 Background

Since 2012, the Commission has been responsible for the independent economic regulation of the water industry, including SA Water and all other South Australian licensed water and sewerage retailers, in accordance with the *Water Industry Act 2012 (WI Act)*.

A principal element of the Commission's regulatory function for SA Water is the making of regulatory determinations that apply for defined periods. The regulatory determinations set the maximum revenues that SA Water may earn and the service standards that SA Water must provide to its drinking water and sewerage customers. In doing so, the Commission's objective is to protect the long-term interests of consumers with respect to the price, quality and reliability of those essential services.

In June 2020, the Commission completed the current regulatory determination process for the period from 1 July 2020 until 30 June 2024, SAWRD20.

The Commission will make a new regulatory determination to apply from 1 July 2024 to 30 June 2028: SAWRD24. The first step in that process is to establish the Framework and Approach that will apply to the next determination.

## 1.2 Legal requirements

The Commission may make determinations regulating prices, conditions relating to prices and price-fixing factors for goods and services in a regulated industry (such as the water and sewerage services industry). The Commission's previous determinations of SA Water's maximum drinking water and sewerage revenues are a form of price determination.

In making a price determination, the Commission must ensure that:

- ▶ wherever possible the costs of proposed regulation do not exceed the associated benefits, and
- ▶ its decision takes into account and clearly articulates any trade-off between costs and service standards.

There are other legislative requirements and objectives that guide the Commission's determinations. Those generally focus on the principles of economic efficiency which, when applied to SA Water, means that the Commission encourages it to optimise the potential of its resources and seek continuous improvement in areas of service that its customers value.

The Commission's economic regulatory function exists within a broader policy and regulatory system that applies to the water industry. The other regulators and agencies responsible for the environmental, health, social and technical regulation of SA Water are summarised in Table 1.1.

Table 1.1: Entities involved in the regulation of the water industry

Entity	Overview of role within the water industry	Relevant legislation
Consumer and Business Services	<p>Responsible for administration of the Australian Consumer Law, covering consumer protection and fair trading, in South Australia</p> <p>Regulates the relationship between landlords and tenants for the payment of rates and charges for water and sewerage services</p> <p>Regulates the professional conduct of plumbers</p>	<p><i>Competition and Consumer Act 2012</i></p> <p><i>Residential Tenancies Act 1995</i></p> <p><i>Plumbers, Gasfitters and Electricians Act 1995</i></p>
Department of Human Services	<p>Develops customer hardship and concession policies</p> <p>Administers the Consumer Advocacy and Research Fund</p>	<i>Water Industry Act 2012</i>
Department of Environment and Water	Regulates state water resources and other natural resource management matters	<i>Natural Resources Management Act 2003</i>
Energy and Water Ombudsman SA	Handles complaints from customers of water retailers that have joined the scheme	<i>Water Industry Act 2012</i>
Environment Protection Authority	Regulates the environmental impact of water businesses	<i>Environment Protection Act 1993</i>
Essential Services Commission	<p>Regulates behavioural standards for the sale and supply of water and sewerage retail services</p> <p>Establishes average customer service and reliability service standards for water and sewerage retail services and assesses the prudent and efficient costs for delivery of water and sewerage retail services</p> <p>Regulator for the third party access regime</p>	<p><i>Essential Services Commission Act 2002</i></p> <p><i>Water Industry Act 2012</i></p>
Minister for Environment and Water	<p>Administers the Water Industry Act</p> <p>Directs SA Water's Board in performing its functions</p>	<p><i>Water Industry Act 2012</i></p> <p><i>South Australian Water Corporation Act 1994</i></p> <p><i>Public Corporations Act 1993</i></p>
Ombudsman South Australia	Investigates complaints about South Australian Government and local Government agencies	<i>Ombudsman Act 1972</i>
SA Health	Regulates public health requirements for providing drinking water supplies	<i>Safe Drinking Water Act 2011</i>
Technical Regulator	Regulates safety and technical matters	<i>Water Industry Act 2012</i>

### 1.3 Roles and responsibilities

The roles and responsibilities of the main entities involved in the SAWRD24 review process are as follows.

#### Government:

- ▶ sets overall policy framework for regulation of the water and sewerage industries<sup>3</sup>
- ▶ represented by the Minister for Environment and Water and the Treasurer, is the owner of the Corporation, acting for and on behalf of the people of South Australia, and
- ▶ includes other regulators, such as departments that set regulatory requirements for SA Water's operations.

#### Commission:

- ▶ within the overarching policy and legal framework established by Government, develops, in consultation with stakeholders, the regulatory framework under which regulatory determinations are made and implemented, and
- ▶ is responsible for making the final regulatory determination under which SA Water provides the water and sewerage retail services valued by customers for the lowest sustainable cost.

#### SA Water:

- ▶ is accountable for delivering water and sewerage services that meet its customers' needs, while meeting all relevant regulatory obligations, and
- ▶ is responsible for delivering the Regulatory Business Plan (as approved through the determination process) and transparently reporting progress and outcomes to customers, stakeholders and the Commission on an ongoing basis.

#### Consumer stakeholders:

- ▶ play a key role in identifying customer values, views, preferences and priorities to SA Water and in the regulatory process, and
- ▶ have the opportunity to engage in and contribute to the regulatory process.

#### Other potential consultation bodies:

Other bodies may be created under the regulatory determination framework where that adds value to the process and contributes towards the delivery of better outcomes for customers. For example, SAWRD20 included a Customer Negotiation Committee, which challenged SA Water in relation to its Regulatory Business Plan. Through the development of this Framework and Approach, the Commission is seeking feedback on the need for and nature of any such bodies—new or currently in existence—for the SAWRD24 process (discussed further in Chapter 4).

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<sup>3</sup> This includes issuing Pricing Orders under section 35(4) of the *Water Industry Act 2012* and Ministerial Directions under section 6 of the *Public Corporations Act 1993*.

## 1.4 Purpose of SAWRD24

As part of its regulatory functions under the WI Act and ESC Act, and to protect the long-term interests of SA Water's consumers, the Commission has decided to make pricing determinations and to review the consumer protection regime that applies to the retail services provided by SA Water. These consumer protections will continue to apply as:

- ▶ SA Water is a monopoly service provider of water and sewerage retail services to the majority of South Australians, and
- ▶ as a result, SA Water does not have the benefit of competition to drive economically efficient behaviour, such as providing service levels that are valued by customers and seeking cost efficiency in the provision of retail services.

Economic regulation can act to substitute for that lack of competition by providing drivers for efficiency, thereby ameliorating potential economic detriment to customers (the costs of which may be materially greater than the costs of regulation) and protecting their long-term interests.

The economic regulatory regime involves the Commission making binding regulatory determinations. These set the maximum revenues that SA Water can recover from the provision of water and sewerage retail services, as well as the minimum operational (reliability metrics) and consumer protection (billing, connection/disconnection, information and hardship standards) applicable to the delivery of those services.

The first step for the determination process is the publication of a Framework and Approach. This sets out the key timing, process and governance matters that will apply to the making of that regulatory determination. This is important as it establishes, and publicly articulates, the broad parameters/governance arrangements for the review for all stakeholders. It is an early stage in reaching an alignment of expectations among stakeholders.

Consistent with previous determinations, and the Commission's primary objective, SAWRD24 will deliver:

- ▶ a price determination that sets four-year revenue caps for drinking water retail services and sewerage retail services, and specified pricing principles for other retail services (including recycled water and connections services)
- ▶ binding service standards and customer service obligations that SA Water must meet during the four-year regulatory period, and
- ▶ a robust framework for monitoring and evaluating SA Water's performance during the SAWRD24 period.

### Consultation question:

Are there any issues, factors or changes in SA Water's operating environment that need to be considered that would change any of the existing intended outcomes, outlined above, for the next regulatory determination?

### 1.4.1 Long-term context

As an asset-intensive long-term business, SA Water must have a strategic long-term understanding of the condition, performance, and investment profile of its asset stock. That understanding will inform the expected shape of its future investment profile, which should, in turn, underpin its periodic Regulatory Business Plans. The Commission expects SA Water to share and discuss that profile with stakeholders on a regular basis, as that will assist stakeholders to understand the long-term context of the proposed investments in each Regulatory Business Plan.

For example, as a matter of general practice, in a long-life asset company such as SA Water, material or significant departures from any of its forecast costs would not be expected, absent a clearly identifiable change in the operating environment. If sound and robust long-term asset management plans are in place and effective, general trends in material project and cost drivers should be known well in advance. The reasons for any variations from these trends, within a specific regulatory period, should be clearly understood.

As such, any variations in required expenditure between regulatory periods, along with a clear picture of the need for and nature of proposed expenditure in the next period and beyond, should be readily identifiable, transparent and justifiable (including to SA Water's customers), well before a draft Regulatory Business Plan is submitted. Further, where expenditure from previous periods was not required or was not incurred (for example, through reprioritisation), there should be a public and transparent explanation and discussion of such events.

While being of benefit to each regulatory determination process, these outcomes have a wider positive outcome. They provide the Commission, customers, other stakeholders and SA Water's owner with confidence that SA Water is *continually* striving to deliver the water and sewerage retail services that its customers value, at the lowest long-term sustainable cost.

### 1.4.2 SAWRD24 objectives, outcomes and strategies

To protect consumers' long-term interests with respect to price, quality and reliability, it is proposed that, as was the case for SAWRD20, the Framework and Approach for SAWRD24 should continue to challenge SA Water to:

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

Consistent with SAWRD20, it is proposed that SAWRD24 will promote those outcomes through:

- ▶ requiring SA Water to understand what customers value, and to develop proposals for services and prices that respond to those needs
- ▶ challenging SA Water to continually improve and become more efficient over time by taking a long-term approach to its decision-making, asset management, financing and delivery strategies, to ensure that the essential services it provides are sustainable, and
- ▶ ensuring that customers pay the lowest sustainable price for SA Water's water and sewerage services, for the quality and reliability levels valued by them.

These are consistent with protecting South Australian consumers' long-term interests with respect to the price, quality and reliability of SA Water's services. They are aimed at promoting a high-performing water utility that understands and responds to the requirements of its customers, while becoming more efficient over time.

The Commission also proposes to continue the strategies deployed in SAWRD20 through into SAWRD24:

- ▶ Putting customers' interests at the centre of the regulatory process.
- ▶ Providing opportunities for the early identification and resolution of issues and provide up-front clarity on regulatory issues—including through the Commission raising early and clearly any issues or challenges that it sees emerging throughout the regulatory determination process (rather than at the end of the process in the draft or final regulatory determination).
- ▶ Obtaining an earlier and wider range of evidence on matters relevant to the determination—particularly customer views—and maximising the potential contribution of existing bodies and knowledge bases (including other regulators and the Commission's and SA Water's consumer advisory committees).
- ▶ Embedding SA Water's focus on ownership of its performance, its customer relationships, its customer engagement, including obtaining a wider range of views, in order to deliver a regulatory business plan that meets customers' expectations.
- ▶ Continuing direct customer involvement in the preparation of SA Water's draft Regulatory Business Plan, in a constructive and non-adversarial way. This is in order to capture the diversity of views—not necessarily to reach a consensus position (as the Commission is ultimately the decision maker informed by those views).

**Consultation question:**

Are there any issues, factors or changes in SA Water's operating environment that need to be considered that might have an impact on any of the existing intended objectives, outcomes and strategies, outlined above, for the next regulatory determination?

## 1.5 Lessons learned from SAWRD20

The Commission has undertaken an ex-post review of the SAWRD20 process, to inform its assessment of the effectiveness of that process, and identify opportunities for further refinements and improvements for the SAWRD24 review process. That review included commissioning an independent review and report, prepared by Dr Pat Walsh, a former Chair of the Commission.<sup>4</sup> Dr Walsh's review involved interviews with stakeholders from the previous process and afforded them the opportunity to put their views publicly through the report.

Through the ex-post review, stakeholders, while generally positive about the SAWRD20 process and outcomes overall, identified various issues which they felt required further thought, comment and consultation, in order to improve the SAWRD24 process:

- ▶ **Communication and timing:** Stakeholders expressed a desire for the process to start earlier, and ideally, have more of an ongoing and iterative approach to understanding SA Water's past performance and possible future investment drivers, before a particular investment option is selected and committed to by SA Water.<sup>5</sup>

<sup>4</sup> SA Water Regulatory Determination 2020 External post project review, final report, October 2020, available <https://www.escosa.sa.gov.au/ArticleDocuments/21592/20201304-Water-SAWRD20-ExternalPostProjectReview-FinalReport-PatrickWalsh.pdf.aspx?Embed=Y>

<sup>5</sup> Ibid, pp. 24-27.

- ▶ **Consumer engagement:** There was strong stakeholder support for the additional measures used in SAWRD20 to involve customers more closely in the regulatory determination process. That said, stakeholders would like to see greater clarity on various issues in the SAWRD24 process (greater alignment of expectations, roles and responsibilities for the parties involved in the review, timing and resourcing issues, customer challenge versus negotiation, clarity regarding outcomes and an agreed framework for customer engagement by SA Water).<sup>6</sup>
- ▶ **Regulators' working group:** Broad support for the mechanisms used to better understand and co-ordinate the requirements around economic, environmental, public health, social, and technical regulation outcomes that SA Water must achieve. Stakeholders wanted to see greater use of this group in the next review, additional transparency around how this group worked, and for it to be available to advise consumers and consumer advocates throughout the regulatory process.<sup>7</sup>

Following receipt and publication of that report, the Commission convened a stakeholder workshop, in which the report's themes and issues were further discussed and clarified.

The Commission is grateful for the time, effort and consideration given by stakeholders through each of these ex-post review processes. The advice and feedback received is explained and drawn on in this consultation paper, which presents various options and questions on the possible approaches that the Commission might adopt for the next determination's Framework and Approach.

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<sup>6</sup> Ibid, pp. 28-30.

<sup>7</sup> Ibid, pp. 38-39.

## 2 Communication and timing

Based on initial stakeholder advice and feedback, gathered through the ex-post review discussions, the Commission has prepared an indicative high-level overall timetable for SAWRD24, to stimulate further discussion.

While that timetable provides for a longer process overall, many of the proposed milestones are consistent with those of SAWRD20. For example, the Commission still intends to publish Guidance Papers, and to allow broad public comment on both SA Water's Regulatory Business Plan and its own Draft Regulatory Determination.

Feedback received to date has identified three specific elements of the overall timetable that require further consideration:

- ▶ the nature, scope and timing of SA Water's draft Regulatory Business Plan (refer Chapter 3)
- ▶ the nature, scope and timing for involving customers in the review process (refer Chapter 4), and
- ▶ the scope of issues to be dealt with in the Guidance Papers (refer Chapter 6).

The advantages and disadvantages of the proposed possible approaches to be taken in each of these areas is discussed in the remaining chapters of this consultation paper.

Table 2.1: Proposed timetable for SAWRD24

Month(s)	Subject	Lead party	Comment
Feb 2021	SAWRD24 Framework and Approach consultation paper	Commission	This paper sets out the proposed process and methodology and invites feedback through public consultation.
Feb – Mar 2021	Consultation to inform Final Framework and Approach	Commission	6-week public consultation period.
May 2021	SAWRD24 Final Framework and Approach	Commission	Will confirm the process and high-level methodology.
June – Dec 2021	Initial Guidance Papers	Commission	Commission will provide for stakeholder feedback.
June 2021 – Mar 2023	SA Water develops draft RBP with stakeholders, including: <ul style="list-style-type: none"> <li>▶ SA Water publishing its indication of the likely overall revenue and delivery envelope (which will need to be updated as discussions on options occur)</li> <li>▶ SA Water publishing its long-term investment plan under the Commission's Monitoring, Evaluation and Reporting Framework</li> </ul>	SA Water	Provides a longer development period, with an open, transparent and inclusive process, noting that the scope is to be determined.

Month(s)	Subject	Lead party	Comment
	<ul style="list-style-type: none"> <li>▶ SA Water publishing its initial 'priority investment list' (for the four-year period and in the long-term context), for challenge, debate and discussion</li> <li>▶ Consumer challenge, debate and discussion occurs, informed by those publications</li> <li>▶ Publication of final RBP</li> </ul>		
Mar 2023	SA Water final RBP submitted to Commission and publicly released	SA Water	Commission invites further public submissions by May 2023.
May 2023 – Sep 2023	Commission develops Draft Regulatory Determination, taking into account stakeholder feedback.	Commission	Will include the proposed price determination, consumer protection framework and monitoring and evaluation framework.
Sep 2023 – Nov 2023	Draft Regulatory Determination released for public consultation	Commission	6-week public consultation period.
Nov 2023 – May 2024	Commission develops Final Regulatory Determination	Commission	Allows additional time to consult with stakeholders between draft and final determination, compared to SAWRD20 process.
May 2024	Final Regulatory Determination released	Commission	Will include the final price determination, consumer protection framework and monitoring and evaluation framework.
May 2024 – Jun 2024	SA Water implementation	SA Water	To prepare for 1 July 2024 start.

**Consultation question:**

Are there any major issues or concerns with the proposed overall timing, key milestones and opportunities for earlier and wider public debate? If so, how might they be incorporated within the timeline outlined?

### 3 The nature, scope and timing of SA Water's draft Regulatory Business Plan

The Commission is seeking stakeholder views on the approach that should be adopted for developing the draft Regulatory Business Plan for the SAWRD24 review process. The two broad options included in this chapter for consideration are:

- ▶ SA Water develops its draft plan with stakeholders, or
- ▶ SA Water publicly consults once it has developed its draft plan.

The Commission remains open to considering other approaches, but notes that the decision on the approach used for SA Water to develop its draft Regulatory Business Plan may have flow-on effects for the overall timeline. Feedback on the relationship between these processes is also welcomed.

The overarching context within which to consider these options relates to its long-term investment plans, and the need to make a distinction between required and discretionary expenditure and projects.

#### 3.1 Creating greater transparency around how SA Water's Regulatory Business Plans relate to its long-term investment plans

Efficient and effective delivery of water and sewerage services by SA Water is dependent on an efficient and effective asset management system. This aids decision making on the levels of service, risks and life cycle costs for a diverse portfolio of water and sewerage assets.

The Commission's regulatory determination process is part of SA Water's broader long-term planning processes. SA Water's RBP is reliant on having an effective long-term asset management plan.

SA Water's core service delivery relies on long-lived assets that need to be maintained, replaced and upgraded over time based on how demand for its services evolve and what level of services are to be supplied. The long-term plans for managing its overall asset stock should be captured in the long-term capital investment program.<sup>8</sup> This program should include longer-term indicative costing and asset replacement and upgrade cycles. It may also include projects of a more discretionary nature.

The Regulatory Business Plan is a sub-set of this longer-term plan. It provides a more detailed analysis of a specific tranche of the work required in the context of the longer-term planning environment. It is more specific and precise in terms of what is planned to be done in that four-year period,<sup>9</sup> with respect to what needs to be done to maintain defined services levels, and what discretionary investment could be undertaken. Decisions made in one four-year regulatory period will have flow-on impacts to future investment plans. Importantly, the Regulatory Business Plan needs to be developed in close consultation with affected stakeholders, to drive economically efficient behaviour, such as providing service levels that are valued by customers and seeking cost efficiency in the provision of retail services (discussed further in section 1.4 above).

<sup>8</sup> SA Water, 'Our Plan 2020' (Regulatory Business Plan) is available on SA Water's website at <https://www.sawater.com.au/about-us/our-vision-and-strategy/our-plan-2020-24>. Appendix O: 30 year asset planning provided an overview of SA Water's approach to long-term asset planning, available at [https://www.sawater.com.au/\\_data/assets/pdf\\_file/0014/420080/2\\_SAW\\_Our-Plan-2020-24\\_Appendix-O\\_2.1.pdf](https://www.sawater.com.au/_data/assets/pdf_file/0014/420080/2_SAW_Our-Plan-2020-24_Appendix-O_2.1.pdf)

<sup>9</sup> The pricing orders issued by the Government under Section 35(4) of the *Water Industry Act 2012* have specified the time period for each regulatory determination. Refer <https://www.escosa.sa.gov.au/ArticleDocuments/21489/20200611-Water-SecondPricingOrder-RegulatoryPeriod-1July2020-30June2024.pdf.aspx?Embed=Y>

Once the Regulatory Business Plan is agreed through the regulatory determination process, the day-to-day activities of ensuring this is delivered, within cost for the outputs and outcomes anticipated, are the sole responsibility of SA Water and should be transparently articulated through its annual planning and budgeting processes. Regulatory oversight of the service delivery outcomes achieved through SA Water's decisions is provided through the annual monitoring and reporting requirements.

The Commission expects SA Water to provide a clear explanation of how its Regulatory Business Plan for SAWRD24 relates to its long-term capital investment plans. It also expects SA Water to robustly test its Regulatory Business Plan with stakeholders, including its customers.

The customer challenge process for investment considered discretionary will likely be different from that which is focused more on maintaining services levels. Specifically, for discretionary investment, there is the threshold question of whether the investment is needed at all within the four-year period. By contrast, for investment focused on maintaining service levels, the focus of challenge will likely be more focused on the extent to which the investment proposals are prudent and efficient, rather than whether the investment should or should not be undertaken.

### **3.2 When in its planning processes should SA Water start consultation with external stakeholders?**

Given this context, based on feedback received to date through the stakeholder workshop held in December 2020, there is general support from all parties for SA Water to consult widely on a draft Regulatory Business Plan prior to submitting its final draft plan to the Commission. The nature, scope and timing of that process remains to be determined.

The Commission is currently proposing that the process of SA Water developing its draft Regulatory Business Plan run from June 2021 to March 2023 (refer Table 2.1 above).

Based on discussions with stakeholders to date, the Commission sees that there are two broad options for how it could require SA Water to include stakeholders in the planning processes. These are:

- ▶ SA Water develops its draft plan with stakeholders, and/or
- ▶ SA Water publicly consults once it has developed its draft plan.

The options are set out below, with the advantages and disadvantages also included for stakeholders to consider. The Commission notes these options are not exhaustive and welcomes suggestions from stakeholders on any other options that should be considered.

#### **3.2.1 SA Water develops its draft plan with stakeholders**

At this stage, it is the Commission's preference that SA Water use a more open, transparent and collaborative approach to its internal planning and options analysis processes than was the case in the SAWRD20 process.

Under this approach, SA Water would use an iterative process to build up its draft Regulatory Business Plan over time with stakeholders. It would involve stakeholders in its early discussions about the need for investments over the upcoming four years of the regulatory period, explain how its expenditure in those areas has changed over time, what its projections are for future investment needs beyond the regulatory period, and any initial options it has considered to meet those needs. Through this approach stakeholders would build-up an understanding of how the draft Regulatory Business Plan fits within SA Water's long-term capital investment program, as well as the extent to which the proposals included discretionary investment options.

Crucially, under this approach, SA Water would be involving stakeholders before it had performed detailed options analysis or made firm commitment to a particular solution. It would be open about any assumptions it has used, options it has already considered but rejected, and why its preferred option is prudent and efficient. In some cases, SA Water may not have a preferred solution to present. In all cases, it would remain open to genuinely considering external opinions, evidence and challenge.

SA Water would work with stakeholders to balance and prioritise its overall investment program for the SAWRD24 regulatory period, which would form the basis of the draft Regulatory Business Plan, to be provided to the Commission for its consideration.

It is important to recognise that building up an overall cohesive draft Regulatory Business Plan on an iterative basis would, at the outset, require a clear assumption about the overall revenue requirement range, to allow stakeholders to understand the cumulative impact of all of the discrete investment choices being considered. Any expected impacts on current service levels would also need to be clearly explained. This would include whether the options being considered would increase, decrease or maintain current levels; this information should be readily accessed through SA Water's long-term capital investment program. SA Water should also have indicative costings for the programs of work included in its long-term capital investment program, and be able to explain the assumptions behind those costings.

The Commission currently favours this approach. This is because it appears to facilitate the earlier involvement in SA Water's investment planning and prioritisation processes that stakeholders have requested. It also allows SA Water more time to amend its Regulatory Business Plan to respond to feedback from stakeholders before it is submitted to the Commission for its consideration.

### **3.2.2 SA Water publicly consults once it has developed its draft plan**

As an alternative, SA Water could present a full draft Regulatory Business Plan to commence its formal stakeholder consultation. In contrast to the above option, under this approach, SA Water would have completed its main internal planning processes, including options analysis for individual programs, projects and initiatives, and balancing and prioritisation of its overall investment program for the SAWRD24 regulatory period. Unlike in the previous approach, stakeholders are not actually involved in the build-up of the investment plan. Rather, they are presented with a fully formed investment plan to review and challenge.

SA Water would publicly release its draft Regulatory Business Plan, and seek feedback from stakeholders on its proposed investment priorities. This would include a process to allow stakeholders to have the opportunity to comment on how SA Water should balance and prioritise its overall investment program for the SAWRD24 regulatory period.

Under this approach, the Commission would still expect SA Water to be open to making genuine changes to its proposed investment program. SA Water would still need to provide stakeholders with enough information to allow for an informed discussion about options. SA Water would need to be open about any assumptions it has used, options it has already considered but rejected, and why its preferred option is prudent and efficient. It is possible that in some cases, SA Water may not have a preferred solution to present, although unlike the option presented in 3.2.1 above, such cases are likely to be limited. In all cases, SA Water would be expected to remain open to genuinely considering external opinions, evidence and challenge.

The final Regulatory Business Plan submitted to the Commission would need to provide robust and transparent evidence of the consultation undertaken on the draft Regulatory Business Plan, including clearly identifying where SA Water had changed its proposals as a result of the consultation, and where it had not.

A summary of the main advantages and disadvantages for each of the above options are set out in Table 3.1.

Table 3.1: Advantages and disadvantages for different approaches to developing the draft RBP for SAWRD24

Option	Advantages	Disadvantages
SA Water develops its draft plan with stakeholders	<ul style="list-style-type: none"> <li>▶ Easier to engage with stakeholders on key issues.</li> <li>▶ More time for review of and input to key issues.</li> <li>▶ Better identification of stakeholder positions on key issues.</li> <li>▶ Allows draft plan submitted to the Commission to explain the process, the starting positions, the evidence and the proposed outcomes.</li> <li>▶ Allows the Commission better information and evidence in assessing the draft plan.</li> <li>▶ Allows the various stages of development to be debated/tested with consequent feedback effects.</li> </ul>	<ul style="list-style-type: none"> <li>▶ May extend the process and timing for preparation of the final draft plan.</li> <li>▶ Risk that an iterative process could lead to an overall outcome outside of a plausible revenue/performance/delivery envelope.</li> <li>▶ Risk that linkages between elements of the plan may go unnoticed if there is not a focus on the plan as a whole throughout the iterative process.</li> </ul>
SA Water publicly consults once it has developed its draft plan	<ul style="list-style-type: none"> <li>▶ Consumers can see the plan as a whole.</li> <li>▶ SA Water can develop the draft plan as a single plan and prepare interdependencies and links.</li> <li>▶ SA Water can develop robust, evidence-based and fully-costed proposals.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Stakeholders are required to absorb a much larger amount of information at one time, which may place more strain on limited resources available to parties not engaged full-time in this review.</li> <li>▶ Preparation of a full draft plan may inhibit the opportunity for SA Water to readily change elements in response to stakeholder feedback.</li> <li>▶ A full draft plan will require much more intensive planning within SA Water, which may delay its release until later in the period, foreshortening the opportunities for consultation and engagement.</li> <li>▶ Lack of transparency—until possibly too late—on the key drivers and elements of the draft plan.</li> <li>▶ Likely to require longer consultation and decision-preparation periods by the Commission (eg extended period between draft and final determinations).</li> <li>▶ Likely to reduce SA Water’s flexibility to make changes to the plan based on stakeholder and Commission feedback.</li> </ul>

### 3.3 The impact on the timing between the draft and final determinations

The decision on the option for SA Water to develop its draft Regulatory Business Plan may have flow-on effects, particularly in terms of the timing required between the draft and final regulatory determinations. This is currently proposed to run from November 2023 – May 2024 (refer Table 2.1 above).

In particular, the extent to which the process for developing the draft Regulatory Business Plan delivers transparency, raises issues appropriately and allows genuine engagement and debate will dictate the time required for additional review between the Commission's Draft and Final Determinations.

Given this, whichever option is chosen, it will be important that SA Water's processes are aligned with the regulatory timetable, in a manner which allows it to change its Regulatory Business Plan prior to submission to the Commission, based on stakeholder engagement and feedback.

In the event that SA Water is not able or willing to change aspects of its Regulatory Business Plan based on engagement and feedback, the Commission will require a longer time period to conduct a more thorough stakeholder challenge process itself.

However, such an eventuality would be a major impediment to the long-term efficiency and effectiveness of the regulatory determination process overall. This is a key concern that was raised by stakeholders in discussions as part of the ex-post review of SAWRD20.

#### Consultation questions:

- ▶ Which of the proposed approaches for developing the draft Regulatory Business Plan should the Commission adopt for the SAWRD24 review process? Are there any additional advantages or disadvantages of your preferred approach? Are there any risks with the preferred approach that the Commission needs to try to mitigate?
- ▶ Are there any other options for developing the draft Regulatory Business Plan that the Commission should consider? If so, what are the advantages and disadvantages of the alternative approaches proposed? Are there any risks with the alternative approaches that the Commission needs to try to mitigate?

## 4 Options for involving customers in SAWRD24

The Commission is seeking stakeholder views on how to best involve customers in the SAWRD24 review process. This includes the need to consider the level of influence that customers can ultimately have on the Commission's decisions, and by extension, SA Water's decisions.

Through its Regulatory Determinations, the Commission makes a series of decisions on behalf of all customers. The Commission is assisted in this process where it has robust evidence from a diverse range of sources. Customers, customer advocates and other stakeholders play a vital role in providing, assessing, and challenging the evidence put before the Commission for its consideration. However, for the SAWRD24 process, the Commission will remain the ultimate decision maker; any consideration of the role of customers in the SAWRD24 process must be clear about this fact.

At this point in time, the Commission is minded to characterise the role to be played by customers in the SAWRD24 process as being more akin to a 'challenge' role - providing a valuable source of challenge for both the Commission and SA Water's decisions - rather than a 'negotiation' role. This is to recognise the non-binding nature of any of the evidence of customer views put before the Commission.

In that context, this chapter sets out two broad options for consideration with respect to the role of customers, customer advocates and other stakeholders in SAWRD24:

- ▶ enhancing the role of the Consumer Experts Panel, and/or
- ▶ establishing a customer challenge group.

These options are not exhaustive and the Commission remains open to considering other approaches. In proposing alternative approaches, stakeholders need to be aware that the decision on the approach used to include customer challenge into the process, may have flow-on effects for the process used to develop, and assess, SA Water's draft Regulatory Business Plan. Feedback on the relationship between these matters is also welcomed.

Background information is included on the Commission's current views on the purpose and scope of involvement for customers, and some of the key elements of the Customer Negotiation Committee processes used in the SAWRD20 process. This information is included to provide context for stakeholders to consider in formulating their responses.

### 4.1 The purpose and scope of customer involvement needs to be clear

In any form of participatory decision-making process, it is important to be clear with stakeholders what level of influence they can have over the ultimate decisions. To date, discussions with the stakeholders involved in the SAWRD20 review process have considered the question of whether the Commission should expect customers and customer representative groups to 'negotiate with' SA Water or to 'challenge' its thinking and proposals.

The SAWRD20 process sought to involve consumers, and consumer representatives, through the use of two mechanisms: the Customer Negotiation Committee and the Consumer Experts Panel. A summary of the role of each follows.

#### 4.1.1 The role of the Customer Negotiation Committee in SAWRD20

In the SAWRD20 review process, the Commission introduced a Customer Negotiation Committee to work with representatives of SA Water in a Negotiation Forum.<sup>10</sup> As explained in the Framework and Approach paper for that determination, the three-person committee was intended to 'negotiate' with SA Water by assisting SA Water with developing and testing its business plan, within the guidance parameters as set out by the Commission.<sup>11</sup>

Importantly, the approach did not require or expect the Customer Negotiation Committee and SA Water to reach agreement on all aspects of the draft business plan. The negotiation process was considered non-binding, with the Commission remaining responsible for making the regulatory determination that best serves consumers' long-term interests. However, the Commission noted that if issues were successfully negotiated between the parties and consistent with the guidance provided by the Commission up front, then it would be "... likely to accept or give significant weight to those outcomes when making its determination."<sup>12</sup>

#### 4.1.2 The role of the Consumer Experts Panel in SAWRD20

The Commission also convened a Consumer Expert's Panel, which drew on the collective knowledge, skills, expertise and experience of the Commission's Consumer Advisory Committee and SA Water's customer advisory groups, sitting jointly.<sup>13</sup> Consumer Experts Panel members worked directly with their constituencies to gather evidence on any particular issues for those groups of customers. They also provided research and evidence to inform SA Water's business plan and the Negotiation Forum.<sup>14</sup>

The key purpose of the Consumer Experts Panel in SAWRD20 was to allow members to identify and raise issues important to the customers they represent. The Commission's intent was to provide to members the resources and opportunity to have their views heard through an inclusive regulatory consultation process. This included the capacity to commission research, (through the Commission), on areas of inquiry, that would benefit the SAWRD20 review process and the outcomes for SA Water's customers and the community.

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<sup>10</sup> Further background on the Customer Negotiation Committee is available at <https://www.escosa.sa.gov.au/industry/water/retail-pricing/sa-water-regulatory-determination-2020/negotiation-forum>

<sup>11</sup> SA Water Regulatory Determination 2020: Final Framework and Approach, July 2018, available <https://www.escosa.sa.gov.au/ArticleDocuments/1172/20180702-Water-SAWaterRegulatoryDetermination2020-FrameworkandApproach-Final.pdf.aspx?Embed=Y>

<sup>12</sup> SA Water Regulatory Determination 2020: Final Framework and Approach, July 2018, p. 3.

<sup>13</sup> Further background information on the Consumer Experts Panel is available at <https://www.escosa.sa.gov.au/industry/water/retail-pricing/sa-water-regulatory-determination-2020/sa-consumers-expert-panel>

<sup>14</sup> The SA Consumer Experts Panel developed a Priorities Report summarising its key priorities for SAWRD20, available <https://www.escosa.sa.gov.au/ArticleDocuments/11294/20190107%20-Water-SAWRD20-ConsumersExpertsPanel-PrioritiesReport.pdf.aspx?Embed=Y>. SA Water met with the Consumer Experts Panel in July 2019 to discuss the issues raised in the Priorities Report, which it summarised in a public response for other stakeholders to consider, available <https://www.escosa.sa.gov.au/ArticleDocuments/11294/20190805-Water-SAWRD20-ResponseToFeedback-PrioritiesReport.pdf.aspx?Embed=Y>

## 4.2 Customer ‘challenge’ or ‘negotiation’ in SAWRD24?

Different views emerged throughout the SAWRD20 process on what the purpose of the Customer Negotiation Committee was, and what it could practically achieve in its discussions with SA Water about its draft Regulatory Business Plan.

Reflecting the feedback provided in the final report of the Chair of the Customer Negotiation Committee,<sup>15</sup> the ex-post review performed by Dr Pat Walsh,<sup>16</sup> and the follow-up discussions with involved stakeholders, as well as the Commission’s own experiences, a summary of the main advantages and disadvantages identified for using a customer ‘negotiation’ or customer ‘challenge’ process are set out in Table 4.1.

Table 4.1: Advantages and disadvantages between seeking customer ‘negotiation’ or ‘challenge’ in the SAWRD24 process

Option	Advantages	Disadvantages
Negotiate	<ul style="list-style-type: none"> <li>▶ Allows direct consumer input to SA Water’s business plan development, as well as in other aspects of the process.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Capacity of a consumer body to fully negotiate with SA Water (knowledge, expertise, representation).</li> <li>▶ Unless Government agrees to be bound by the ‘deal’, it may not become binding in practice.</li> <li>▶ May be questions as to the legitimacy of consumer body to represent all consumers’ interests.</li> <li>▶ Resource intensive for all parties.</li> <li>▶ If membership is drawn from existing consumer representative bodies, may have adverse impacts (actual or implied) on that body’s capacity to engage more broadly in the regulatory process.</li> </ul>
Challenge	<ul style="list-style-type: none"> <li>▶ Allows direct consumer input to SA Water’s business plan development, as well as in all other aspects of the process.</li> <li>▶ Does not require ‘agreement’ with SA Water; allows identification of issues in the process, without requiring the body to necessarily have to resolve those issues.</li> <li>▶ Does not require the body to be fully ‘representative’.</li> <li>▶ If membership is drawn from existing consumer representative bodies, should not have any adverse impacts (actual or implied) on that body’s capacity to engage more broadly in the regulatory process.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Does not deliver a binding ‘deal’.</li> </ul>

<sup>15</sup> Report of the Chair of the Customer Negotiation Committee, November 2019, available <https://www.escosa.sa.gov.au/ArticleDocuments/11296/20191112-Water-SAWRD20-CustomerNegotiationCommittee-IndependentChairReport.pdf.aspx?Embed=Y>

<sup>16</sup> SA Water Regulatory Determination 2020 External post project review, final report, October 2020, available <https://www.escosa.sa.gov.au/ArticleDocuments/21592/20201304-Water-SAWRD20-ExternalPostProjectReview-FinalReport-PatrickWalsh.pdf.aspx?Embed=Y>

On balance, the Commission is minded to characterise the role to be played by customers in the SAWRD24 process as being more akin to a ‘challenge’ role, rather than a ‘negotiation’ role. In large part, this is due to the role reserved to the Commission in the regulatory determination process. In particular, the fact that the Commission has statutory duties to fulfil, in terms of making the final decision about any industry codes, rules or guidelines and price determinations. In doing so, the Commission is assisted in this process where it has robust evidence:

- ▶ on the diversity of views on a particular issue
- ▶ that a range of plausible options have been identified, discussed and considered, and
- ▶ that trade-offs and prioritisations have occurred, with an understanding of the impact of several discrete choices on the overall outcome for all affected parties.

The Commission welcomes stakeholder views on how the robust evidence of diverse customer views, needs and preferences can best be obtained in the SAWRD24 process.

#### Consultation questions:

- ▶ Do stakeholders agree that a customer challenge role is more appropriate than a customer negotiation role, given the Commission’s statutory decision-making role? If not, why?
- ▶ Are there any other relevant matters that need to be considered in this area?

### 4.3 How to include the customer challenge into the SAWRD24 review process?

Through the ex-post review stakeholders provided broad support for continuation of both the Consumer Experts Panel and a formal customer ‘challenge’ body. However, further discussions are required on the role to be played by each customer challenge body.

There have been suggestions that the Consumer Experts Panel could have a role throughout the ongoing regulatory process (that is, having a long-term approach, not merely focussed on a specific regulatory determination).<sup>17</sup> This panel could potentially be drawn from existing consumer bodies (for example, the Commission’s Consumer Advisory Committee and SA Water’s Consumer Advisory Group), but could also include other representatives (for example, regulators, other consumer groups or organisations not currently represented).

There have also been suggestions that a formal ‘customer body’ (of some form) be involved in the development of SA Water’s draft Regulatory Business Plan, and available throughout the next regulatory determination process. However, as discussed above, views on the role and expected outcomes for such a body were mixed.

A further option could involve a sub-committee of the larger body, which could focus on issues as directed by that larger body and feed back to it outcomes, seeking further guidance and taking further advice as the process progresses.

It remains the Commission’s position that were such a body to be used, while members might be *drawn from* sector organisations (for example, consumer groups, industry groups etc.), they should not be or act as *representatives of* those groups. Instead, they should bring their individual knowledge, insights and skills *informed by* their role in a sector organisation, thereby contributing to overall positive outcomes for all consumers (not just positive outcomes for their groups).

<sup>17</sup> SA Water Regulatory Determination 2020 External post project review, final report, October 2020, pp. 28-30.

All stakeholders have agreed that if a formal customer challenge body is to be used for SAWRD24, it needs to be established as soon as possible, with early agreement among all parties on the roles, expected outcomes and governance of the ‘challenge’ process. Stakeholders have also identified that sufficient resources, both in terms of technical expertise (from members and provided to members) and time commitment from members, would need to be made available to allow the group to appropriately perform its defined role.

Whatever approach is adopted for SAWRD24, it is the Commission’s intention to be involved earlier and in a stronger way. For example, in supporting the various bodies from the outset in confirming scope, providing resources, answering queries and questions, providing guidance and related matters. This should allow the bodies to engage with the subject matter more meaningfully, enhancing customer input into the regulatory process.

Questions remain around what the structure of the customer challenge bodies should be for SAWRD24. In particular:

- ▶ Are two separate bodies needed to undertake the customer challenge role?
- ▶ If not, could the role be performed by a sub-set of a larger Consumer Experts Panel?

A summary of the main advantages and disadvantages for using the Consumer Experts Panel or a separate customer challenge body in the SAWRD24 process are set out in Table 4.2.

Table 4.2: Advantages and disadvantages for different approaches to including customer challenge into the SAWRD24 process

Option	Advantages	Disadvantages
Use of Consumer Experts’ Panel	<ul style="list-style-type: none"> <li>▶ If role is to challenge, using the existing body will provide long-term continuity and expertise to the process.</li> <li>▶ May be able to better understand the issues that need to be considered and weighed in reaching final decisions.</li> <li>▶ Existing bodies and support (noting that additional support and engagement by the Commission will nevertheless be required).</li> </ul>	<ul style="list-style-type: none"> <li>▶ If single group is too large, individual parties may not have sufficient time to have their issues heard and understood.</li> <li>▶ It can be administratively difficult to organise a large group to have regular meetings.</li> </ul>
Use of separate body (eg Consumer Negotiation Committee equivalent)	<ul style="list-style-type: none"> <li>▶ Useful if the purpose of the body is to negotiate with SA Water.</li> <li>▶ Members can have significant access to senior management and subject matter experts.</li> <li>▶ Members can develop a good understanding of proposals through access to detailed internal confidential information, including board papers.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Members need to be able to make a significant personal commitment to the task to be able to meaningfully participate.</li> <li>▶ The process is focused on a particular regulatory determination rather than having an ongoing role, which may lead to focus more heavily on short-term wins rather than long-term trade-offs.</li> <li>▶ Needs to be able to influence SA Water’s planning processes early enough to have an impact on the proposals being negotiated.</li> </ul>

Option	Advantages	Disadvantages
		<ul style="list-style-type: none"> <li>▶ Time and resources required to build up base level knowledge for new group through on-boarding and backgrounding process.</li> </ul>

**Consultation questions:**

Consumer Experts Panel

- ▶ What should be the specific role and focus of the Consumer Experts Panel?
- ▶ What should the membership of the Consumer Experts Panel be? Are there any interests that are currently under-represented that need to be invited to join?
- ▶ What resources are required for the successful operation of the Consumer Experts Panel (for example, access to consultants and remuneration)?
- ▶ Are there any other relevant matters that need to be considered in this area?

Customer challenge body

- ▶ Should a separate customer challenge body be used in the development of SA Water’s Regulatory Business Plan? If so, should it be a body separate from the Consumer Experts’ Panel? If so, why?
- ▶ Should the role of the customer challenge body be limited to involvement with SA Water’s Regulatory Business Plan, or should it have a wider remit to be involved through the regulatory determination process?
- ▶ Where should membership be drawn from? How many members should the body have in order to be effective?
- ▶ What support should be provided to the body to give it appropriate capacity to effectively participate in the review?
- ▶ Are there any other relevant matters that need to be considered in this area?

## 5 Regulators' Working Group

In SAWRD20, the Commission established the Regulators' Working Group to facilitate greater coordination between the technical, safety, environmental and public health regulators.<sup>18</sup> Members of the group are the Commission, Environment Protection Authority, SA Health, the Office of the Technical Regulator and the Department of Environment and Water.<sup>19</sup> Each regulator has an important role to play in the overall regulatory system and has an obligation to perform their respective duties.

The establishment of the Regulators' Working Group evolved over the course of the SAWRD16 and SAWRD20 review processes, as all involved regulators took steps to better coordinate their approach to regulating SA Water. This ongoing process has sought to clarify each regulator's respective role in the regulatory system, to minimise duplication of effort, and to identify joint solutions or efficiencies (where possible).

The Commission also worked to introduce greater transparency around the obligations SA Water was required to meet, by requesting public submissions from these other regulators on the extent to which SA Water's Regulatory Business Plans reflected their requirements. The Regulators' Working Group will continue to meet quarterly to discuss emerging issues.

The enhanced regulatory co-ordination achieved in SAWRD20 was considered valuable by most parties, with suggestions that a body such as the Regulators' Working Group should continue.<sup>20</sup> However, there were also calls for greater clarity around the expectations for the outcomes and governance of the Regulators' Working Group.

In particular, stakeholders thought there might be opportunities for the Regulators' Working Group to be more transparent about existing legally binding 'regulatory obligations' as a source of investment requirements for SA Water. There were also discussions about the opportunities for the Regulators' Working Group to provide guidance around future planned regulation obligations, as early as possible. Stakeholders have expressed support for even greater coordination between regulators in SAWRD24 to ensure that SA Water can efficiently meet a range of regulatory requirements imposed at least cost to consumers. They also commented on the need to ensure that regulatory costs are transparent.

It is proposed that, throughout SAWRD24, SA Water be asked to provide joint briefings to the Regulators' Working Group on various aspects of its strategy, performance and future plans. Starting with a shared understanding of the issues allows for greater coordination of the obligations and expectations each regulator places on SA Water. This will also allow the Regulators' Working Group to more clearly communicate to SA Water, and other stakeholders, any minimum service standards or requirements that are (or will be) placed on SA Water.

### Consultation questions:

- ▶ Does the above discussion accurately reflect stakeholder's expectations of the Regulators' Working Group?
- ▶ Are there any other relevant matters that need to be considered in this area?

<sup>18</sup> Further background information on the Regulators Working Group is available at <https://www.escosa.sa.gov.au/industry/water/retail-pricing/sa-water-regulatory-determination-2020/regulators-working-group>

<sup>19</sup> The Regulators Working Group developed and agreed to a charter outlining the objectives and commitments members made to the SAWRD20 process, available <https://www.escosa.sa.gov.au/ArticleDocuments/1200/20190225-Water-SAWaterRD20-RWGGGroupCharterSigned.pdf.aspx?Embed=Y>

<sup>20</sup> SA Water Regulatory Determination 2020 External post project review, final report, October 2020, pp. 38-39.

## 6 Matters to be addressed in Guidance Papers

For SAWRD20, the Commission published a series of Guidance Papers<sup>21</sup> following the release of the Framework and Approach paper. Those papers set out background information, principles and preliminary positions in relation to matters of methodology, parameters and expectations for the SAWRD20 process.

Releasing such papers was a change from the Commission's past practice, where detailed guidance would often be provided only after SA Water submitted its draft Regulatory Business Plan.

Stakeholder feedback was that this was a positive development; although (consistent with overall themes) they noted that such papers should be released as early as possible in the process.<sup>22</sup>

Following the finalisation of this Framework and Approach, the Commission again proposes to release Guidance Papers, in consultation with stakeholders, to cover the more detailed issues that will need to be addressed in SAWRD24. The Guidance Papers issued for SAWRD20 may assist stakeholders in considering any areas where early guidance is likely to be helpful.<sup>23</sup>

The Commission presently intends that the Guidance Papers will cover governance and process matters, as well as matters of regulatory policy, principle or methodology that are likely to arise throughout the review process.

In terms of governance and process, those papers could cover:

- ▶ Customer challenge process – setting out the role, membership, governance and operational arrangements for any customer challenge group.<sup>24</sup>
- ▶ Business case templates – setting out the detailed requirements for the publication of information to allow stakeholders to understand and provide feedback on SA Water's proposed programs, projects and initiatives.<sup>25</sup>
- ▶ Gathering and using expert evidence – setting out the expectations around the use of, and role and duties of, parties providing expert evidence, including but not limited to the use of customer surveys as a source of evidence.

In terms of matters of regulatory policy, principle or methodology that are likely to arise throughout the review process, these could include service standards, expenditure proposals and issues associated with the regulatory rate of return.

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<sup>21</sup> Further background on the Guidance Papers is available at <https://www.escosa.sa.gov.au/industry/water/retail-pricing/sa-water-regulatory-determination-2020/guidance-papers>

<sup>22</sup> SA Water Regulatory Determination 2020 External post project review, final report, October 2020, pp. 24-26.

<sup>23</sup> The full set of Guidance Papers issued for SAWRD20 are available at <https://www.escosa.sa.gov.au/industry/water/retail-pricing/sa-water-regulatory-determination-2020/guidance-papers>

<sup>24</sup> For example, for SAWRD20, these matters were set out in the Customer Negotiation Committee Charter, available at <https://www.escosa.sa.gov.au/ArticleDocuments/11296/20190805-SAWRD20-CharterGovernance-NegotiationForumCharter.pdf.aspx?Embed=Y>

<sup>25</sup> For example, for SAWRD20, these matters were set out in Guidance Paper 4: Prudent and efficient expenditure, available at <https://www.escosa.sa.gov.au/ArticleDocuments/1200/20181101-Water-SAWRD20-GuidancePaper4-PrudentAndEfficientExpenditure.pdf.aspx?Embed=Y>

For all of the papers that will be released, as was the case for the SAWRD20 Guidance Papers they will set out the Commission's position on issues based on its best understanding at the time and in a context of seeking to provide long-term regulatory certainty—but at the same time will encourage robust and open debate. While regulatory certainty is important, where there are sound, long-term reasons warranting a change in approach in order to protect consumers' long-term interests, the Commission will do so.

In that light, it is the Commission's intention to provide all stakeholders, including SA Water, with the opportunity to debate regulatory proposals and methodologies through the issue of draft Guidance Papers, before the matters are finalised.

This could include the use of a combination of engagement methodologies, such as round table discussions and/or a 'conference of experts'. The purpose of a 'conference of experts' model in the context of SAWRD24 would be to allow various experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying key issues and areas of agreement and disagreement. Wherever possible, the outcomes of these expert meetings would be summarised and publicly released for all stakeholders to consider.

The Commission's intent is that the process of engaging with stakeholders on the development of the Guidance Papers should provide adequate opportunities for all relevant evidence and information to be shared, discussed and debated, as early as possible in the review process. Certainty on key regulatory parameters, methods and other related issues will assist both SA Water and other stakeholders in preparation of the Regulatory Business Plan. However, the Commission acknowledges that genuinely new information or arguments to support consideration of a new methodology or position may arise after the Guidance Papers have been finalised. In that instance, the Commission would consult further with stakeholders so that the costs and benefits of changing the previous position could be considered and debated by all relevant parties.

**Consultation questions:**

- ▶ Are there any issues with the proposed scope of any of the above Guidance Papers that need to be considered?
- ▶ Are there any other areas where Guidance Papers would assist the review process?
- ▶ In considering the overall timetable for the review, are there any Guidance Papers that need to be released earlier than others?

## 7 Next steps

Stakeholders are invited to discuss or provide submissions on this consultation paper, by no later than **Friday, 26 March 2021**. All submissions will be placed on the Commission's website, subject to any confidential material being excluded. The Commission welcomes discussions with stakeholders on any of the matters raised in this paper, or on any related matters during the consultation period.

Following consideration of the issues raised in submissions, the Commission will release its Final Framework and Approach paper in May 2021. This paper will include the agreed timeframe and key milestones for the SAWRD24 review process. It will also include further details on the scope of the initial set of Guidance Papers, to be released from June 2021 through to December 2021.



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