



**SACOSS' Submission to the
Essential Services Commission of South Australia on
SA Water Regulatory Determination 2024: Framework and
Approach
March 2021**

SACOSS' Submission to the Essential Services Commission of South Australia on SA Water Regulatory Determination 2024: Framework and Approach

First published in March 2021 by the South Australian Council of Social Service

47 King William Road

Unley, SA, 5061 Australia

Ph (08) 8305 4222

Fax (08) 8272 9500

Email: sacoss@sacoss.org.au

Website: www.sacoss.org.au

© South Australian Council of Social Service, 2021

This publication is copyright. Apart from fair dealing for the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission. Enquiries should be addressed to the Communications Coordinator, South Australian Council of Social Service.

Contents

Introduction	4
Clear, early communication of Government Policy and Regulatory settings.....	5
Communication and Timing.....	7
The nature, scope and timing of SA Water’s draft Regulatory Business Plan.....	7
Options for involving customers in SAWRD24 and how to include customer challenge in the process.....	8
Guidance Papers	9
Rate of Return.....	9

Introduction

The South Australian Council of Social Service is the peak non-government representative body for health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage vulnerable South Australians.

SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low income consumers in South Australia. With a strong history of community advocacy, SACOSS and its members aim to improve the quality of life for people disadvantaged by the inequalities of our society.

SACOSS has a long-standing interest in the delivery of essential services. Our research shows that the cost of basic necessities like water and electricity impacts greatly and disproportionately on vulnerable and disadvantaged people.

SACOSS would like to thank the Essential Services Commission of South Australia (ESCOSA) for the opportunity to comment on the SA Water Regulatory Determination 2024: Framework and Approach consultation paper, seeking stakeholder input on key elements of the Final Framework and Approach paper to be released in May 2021.

Based on feedback received on the SAWRD2020 process, ESCOSA has identified three key areas for consultation:

- the nature, scope and timing of SA Water's draft Regulatory Business Plan
- the nature, scope and timing for involving customers in the review process
- the scope of issues to be dealt with in the Guidance Papers

SACOSS is also concerned to ensure the SAWRD24 Framework and Approach clearly sets out the policy and regulatory settings within which ESCOSA must make its decision, identifying areas where consumer engagement can have a meaningful impact on the Final Determination. Our submission therefore provides additional feedback on this issue.

Clear, early communication of Government Policy and Regulatory settings

SACOSS acknowledges that in each regulatory determination ESCOSA remains the ultimate decision maker, and we strongly agree with ESCOSA that ‘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’.¹

SACOSS notes the Productivity Commission’s recent observation in its Draft Report on the Inquiry into National Water Reform that:²

*‘Regulators must also be supported by appropriate governance and institutional arrangements. **Ensuring that economic regulation is transparent and independent provides accountability, better aligning regulatory decisions with long-term consumer interests. And institutional separation, with a clear relationship between utilities and their government shareholders and regulators, remains important and should be retained as a principle under the NWI.**’*

SACOSS is of the view that changes to government policy settings in the final stages of a determination process (as occurred in SAWRD2020), do not lead to, or result in, best-practice economic regulation.

To enable transparency and provide clarity for consumers on the scope of their possible influence in the regulatory determination process, it is vital to ensure the relevant government policy and regulatory settings are established and communicated to consumers early in the engagement phase, and ideally published as part of the Framework and Approach.

Therefore, in the interests of transparency and accountability and to support meaningful consumer engagement in the regulatory process (leading to outcomes that better achieve ESCOSA’s primary objective³), SACOSS considers it is imperative that as part of its SAWRD2024 Framework and Approach, ESCOSA:

- Publish the documents containing the government policy settings that are currently in force and apply to ESCOSA’s decision making at the time of releasing the SAWRD24 Framework and Approach, including:

¹ ESCOSA, [SA Water Regulatory Determination 2024: Framework and Approach – Consultation on the Framework and Approach](#), February 2021, p. 1

² Productivity Commission 2021, [National Water Reform 2020, Draft Report](#), Canberra, p.147

³ 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 Treasurer’s Pricing Orders, dated 28 October 2018⁴ and 25 May 2020⁵
 - the current Ministerial Direction to SA Water, dated 28 May 2020⁶
 - the relevant NWI Pricing Principles (noting the Principles that are excluded by virtue of the Treasurer’s Pricing Orders).⁷
- Explain to consumers how these Government policies influence the regulatory decision-making process, the scope of this influence, and ESCOSA’s expectation that Government policy settings for SAWRD2024 will be finalised early in the regulatory determination process. Included in this should be an explanation of the NWI Pricing Principles, the role of SA Water’s Charter⁸ and how ESCOSA deals with expenditure associated with commercial and non-commercial operations.^{9,10}
 - Outline the independent economic regulatory framework that applies to SA Water (and within which ESCOSA exercises its decision-making powers), including the limits of those powers (what forms part of the regulatory determination and what doesn’t), and the role of consumer engagement within that framework.

It is worth noting that ESCOSA’s Framework and Approach for SAWRD16¹¹ attached the relevant Pricing Orders, Ministerial Direction and NWI Pricing Principles. SACOSS is seeking ESCOSA reinstate this practice for SAWRD2024.

⁴ Treasurer, Pricing Order for Regulatory Period 1 July 2020-30 June 2024, 28 October 2018 see: https://www.treasury.sa.gov.au/data/assets/pdf_file/0011/41123/Pricing-Order-for-the-Regulatory-Period-1-July-2020-to-30-June-2024.pdf

⁵ Treasurer, Second Pricing Order, 25 May 2020 https://www.treasury.sa.gov.au/data/assets/pdf_file/0003/215139/Second-Pricing-Order-for-the-Regulatory-Period-1-July-2020-to-30-June-2024.pdf

⁶ Ministerial Direction to SA Water pursuant to section 6 of the Public Corporations Act 1993, 28 May 2020 <https://www.escosa.sa.gov.au/ArticleDocuments/21489/20200611-Water-DirectionsUnderSection6PublicCorporationsAct1993-GazetteNotice.pdf.aspx?Embed=Y>

⁷ The [National Water Initiative Pricing Principles](#), 2010

⁸ [The South Australian Water Corporation Charter](#), October 2019.

⁹ The SA Water Charter defines non-commercial operations to include those operations that are subject to a direction under section 6 of the *Public Corporations Act 1993* and those operations should be ‘costed and funded in line with government policy or as determined by the Minister and the Treasurer’ (see Charter 9.1 and 9.3).

¹⁰ For example, ESCOSA’s [Second SA Water Price Determination Draft Framework and Approach](#), in November 2013, stated that: ‘A non-commercial activity is an activity that is not required to provide the regulated services, and which does not earn a commercial rate of return in its own right. SA Water incurs non-commercial costs because the Government requires it to perform certain non-commercial activities pursuant to section 6 of the *Public Corporations Act 1993*. The Commission believes that SA Water’s customers should not fund the costs of meeting those non-commercial activities. Such costs should be fully funded by the Government in the form of CSO payments to SA Water.’ See page 9.

¹¹ ESCOSA, [SA Water Price Determination 2016 Final Framework and Approach](#),

Also, ESCOSA's Draft Framework and Approach for SAWRD16 identified that 'it is important that all relevant Government policy settings are finalised well before the review process commences (as) the Commission's approach may change if the policy framework changes',¹² and SACOSS would welcome a similar statement in the SAWRD24 Framework and Approach.

Communication and Timing

SACOSS broadly supports ESCOSA's proposed timetable for SAWRD24. We note the timetable provides for a longer period during which SA Water is expected to develop its Draft Regulatory Business Proposal (Draft RBP) with stakeholders (June 2021 – March 2023), but doesn't provide for a formal consultation process on the Draft RBP.

Whilst SACOSS supports a more transparent, collaborative and iterative process in developing the Draft RBP, we also support the publication of the Draft RBP for public consultation and stakeholder feedback, prior to the Final RBP being submitted to ESCOSA for approval.

SACOSS acknowledges there may not be much movement between the Draft RBP and the Final RBP given the extensive engagement process, but we consider a six-week consultation period on the Draft would allow stakeholders to identify whether their feedback has been incorporated into the Draft Plan (or not), and would provide stakeholders with a further opportunity for input.

SACOSS is also keen to ensure the lengthy engagement process in the lead up to the Final RBP doesn't mean stakeholders forego their right to form a view of the Final RBP once it is submitted to ESCOSA. The engagement process should not also result in the weight accorded to stakeholders' submissions on the Final RBP being diminished.

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

As outlined above, SACOSS supports adopting an approach where SA Water develops its Draft Plan with stakeholders, but also publishes the Draft Plan for consultation before finalising and submitting to ESCOSA.

We acknowledge there will be issues associated with this approach that will need further consideration, including:

- resourcing of stakeholders to participate in engagement on the development of the Draft RBP

¹² ESCOSA, [Second SA Water Price Determination Draft Framework and Approach](#), November 2013, p. 3

- identifying the functions of stakeholder engagement, and how to achieve those functions
- identifying the scope of stakeholders' influence, and ensuring stakeholders understand why the scope may be limited
- addressing information gaps and asymmetries
- establishing an understanding of the role of the SA Water Board
- an evaluation of the role of 'willingness to pay' surveys in the process.

We agree the development of the RBP must necessarily be considered as part of SA Water's longer-term planning processes. Planned expenditure beyond the 2024-28 regulatory period, as well as past expenditure over previous regulatory periods, must provide the context for the expenditure proposed during 2024-28. For example, the 28% increase in capital expenditure for SAWRD2020 will be a relevant consideration for SAWRD24.

Options for involving customers in SAWRD24 and how to include customer challenge in the process

SACOSS agrees that a customer challenge role is more appropriate than a customer negotiation role. We also agree with Mark Henley from Uniting Communities that the SAWRD24 process could involve different engagement mechanisms to achieve the different levels of consumer engagement (exploring, problem solving, challenging and affirming). Importantly, it's essential there is clarity for consumers (at the point of the invitation to discuss and consider) about what level of engagement is anticipated, and the degree of influence that engagement will have on decision making.

We also strongly support the continuation of both the Customer Experts Panel and a formal Customer Challenge body. SACOSS found the independence, expertise and analysis of the Customer Negotiation Committee (CNC) during SAWRD20 was invaluable in achieving a better outcome for SA Water consumers, and we consider the continuation of this body in some form would enhance the engagement process and may operate to address some of the information and resourcing asymmetries that exist between SA Water and the broader stakeholder group. That said, we note the role involved a huge investment of time from the participants who formed the challenge panel and thus needs to be properly resourced.

Given the impact of the CNC in SAWRD20, SACOSS supports the Customer Challenge Body being a separate entity from the Customer Experts Panel, providing separate advice, but maintaining a role in informing the CEP on matters, as well as receiving information from the CEP to inform its views on matters where requested.

We also support the Customer Challenge body having a role in the wider regulatory process, not just the development of SA Water's Business Plan.

Guidance Papers

SACOSS supports ESCOSA's proposal to release Guidance Papers to cover in more detail issues that will need to be addressed in SAWRD24. SACOSS agrees the initial Guidance Papers could cover the following matters relating to governance and process:¹³

- Customer challenge process – setting out the role, membership, governance and operational arrangements for any customer challenge group.
- 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.
- 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.

SACOSS has previously raised issues with the value and weight accorded to willingness to pay surveys, and we would strongly support an independent analysis of the use of these surveys as a source of evidence to justify expenditure proposals.

In addition to the matters identified by ESCOSA above, SACOSS would value Guidance Papers on:

- The functions and role of stakeholder engagement, including explaining the scope of influence on expenditure proposals, and what is excluded from scope (if not detailed in the SAWRD24 F&A).
- The role of Government Policy and institutional separation in economic regulation, including clarity on transparency and accountability.
- ESCOSA's approach to applying the NWI Pricing Principles and the impact of the exceptions to the application of those Principles on the Final Determination (in terms of cost reflective pricing, efficiency targets).
- Current government policy settings which have an impact on or are likely to have a future impact on the regulatory determination
- ESCOSA's approach to supporting and resourcing consumers to participate in these regulatory processes.

Rate of Return

SACOSS supports the rate of return being determined as a separate consultation process to SAWRD24.

¹³ ESCOSA, [SA Water Regulatory Determination 2024: Framework and Approach – Consultation on the Framework and Approach](#), February 2021, p. 25