

# SUBMISSION

**TO |** Essential Services Commission of SA

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**TOPIC |**

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**SA Water Regulatory Determination 2024**

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- Consultation on the Framework and Approach

**DATE |** April 2021

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## Introductory Comments

These notes are in response to the questions asked by ESCoSA in their consultation paper regarding the Framework and Approach for the SA Water regulatory determination 2024, SAWRD24.

The focus of these notes is on aspects of consumer engagement and builds, in part, on the experiences of Uniting Communities Manager of Advocacy, Mark Henley, as a member of the Consumer Negotiation Committee and Consumer Experts panel for SAWRD20.

## Purpose of Consumer Engagement

Before considering the specific questions posed by ESCoSA, we wish to highlight the importance of understanding the purpose of consumer engagement in diverse circumstances and the recognition that there can be different purposes for which consumer engagement is part of the strategy.

We start with some information from the UK specifically relating to the purpose of engagement.

### Sustainability *first* and New-Pin

Sustainability *first*<sup>1</sup> is an NGO from the UK who describe their mission as “To act as a change agent driving sustainable outcomes for people and planet in essential services in the UK.” They have probably done as much ‘deep thinking’ about consumer engagement, company responsiveness and good governance as anyone and so provide very useful perspectives for SA consumers, regulators and businesses. They focus on energy and water and their main projects are listed as:

- Fair for the Future
- Great Britain Electricity Demand
- Inspire
- New-Pin
- Smart Meter data

And their focus areas are:

- Affordability, Vulnerability and Fairness
- Public Purpose
- Smart demand and data
- Sustainable futures

Their projects and reports are commended to ESCoSA

The project that we wish to refer to specifically is New-Pin<sup>2</sup> (New Energy and Water Public Interest Network) project which recently released their final report from about five years of activity. The Sustainability *first* website says that: “New-Pin was set up to help tackle the tension that can exist between short and long run interests in the energy and water sectors and to develop a more democratic, inclusive and coherent approach to change”.

The New-Pin Final Report was released in November 2020 and identified eight public interest agendas under two broader headings, with suggested levers for change for each of the eight

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<sup>1</sup> <https://www.sustainabilityfirst.org.uk>

<sup>2</sup> <https://www.sustainabilityfirst.org.uk/images/publications/new-pin/New-Pin%20Looking%20to%20the%20long%20term%20FINAL%20report.pdf>

agendas. The various levers for change mainly relate to New-Pin project frameworks and approaches and are available on their website. The eight public interest agendas are:

**a) Tackling the “hard” public interest topics in energy and water**

1. Public interest agenda 1: long run affordability
2. Public interest agenda 2: long run resilience
3. Public interest agenda 3: trust and confidence

**b) Delivering public interest outcomes for energy and water**

4. public interest agenda 4: market led approaches to public interest outcomes,
5. public interest agenda 5: innovation, regulation and government interventions for public interest outcomes,
6. public interest agenda 6: purposeful engagement and understanding the public interest,
7. public interest agenda 7: Board, governance and public interest outcomes, and
8. Public interest agenda 8: planning for future services with a focus on public interest outcomes

We suggest that these 8 ‘public interest agendas’ provide a useful overview of the range of topics that could usefully be considered in the development of the SAWRD24 proposal.

In these comment, we draw on aspects of the final report of the New-Pin project and also recap some comments made by Sustainability *first* director, Sharon Darcy, who delivered the first AER hosted Gill Owen Memorial lecture in February 2018<sup>3</sup>.

Sustainability *first* defines engagement as follows:

*“engagement of consumers, citizens and stakeholders covers a wide range of activities, including direct engagement of ‘real’ people in their individual capacities, consumer research (including through individual behavioural experiments); minimal ‘listening exercises’; engagement of representatives and experts in full collaboration between different parties.”*

The purpose of engagement they describe as: “decision-makers (at every level) need to set clear objectives for any engagement exercise. New-Pin proposes three overarching objectives for consumer, citizen and stakeholder engagement in long-term issues in energy and water sectors:

- consumer outcomes (efficient value for money services)
- cultural (to alter behaviour and culture in sectors and with consumers) and
- legitimacy (shaping service levels or packages and helping to ensure decisions are seen as legitimate / acceptable,)”

New-Pin then summarises the purposes for engagement and impacts of type of engagement and focus in the business as follows:

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<sup>3</sup> <https://www.aer.gov.au/system/files/Sharon%20Darcy%20-%20Sustainability%20First%20presentation%20-%20Gill%20Owen%20Memorial%20Lecture%20-%207%20February%202017.pdf>



Figure 1: Objectives for Engagement (source: Sustainability First)

We consider this diagram to be extremely helpful in identifying the purpose for engagement that flows from various types of engagement with customers: episodic, embedded, deliberative and collaborative.

The purpose can be focussed over a moderate short period of time, for example a specific regulatory process and this tends have been the over focus of most consumer engagement by regulated, natural monopoly networks across Australia, this is reflected by the cell “to improve current customer outcomes / efficiency.”

The purpose “to get cultural / behaviour change in company and with consumers” reflects a somewhat longer-term timeframe and is arguably a purpose of engagement that has been implicit rather than explicit in (South Australian) consumer engagement considerations. This purpose also reflects that good engagement is two way, looking for constructive change both from businesses and consumers. Also noteworthy is the ‘cultural change’ aspect of respectful, ongoing engagement.

We regard the bottom right cell as containing two important purposes for engagement, taking a longer term, future focused perspective and also building trust / legitimacy for the businesses’ actions, from consumers. While all ‘genuine’ engagement will build trust, a shared exploration and problem solving about longer term uncertainties will play a strong role in trust development.

For the SAWRD24 Framework and Approach, we suggest that there is scope for more focus on the intended purposes of engagement with customers, both in terms of outcomes for consumers and SA Water. The F&A can also identify and encourage attention being given to the various purposes for engagement and in particular recognise that the specific matters covered in RD24 should also reflect a broader, longer term perspective.

### Consultation Paper Questions

We now briefly consider the first 8 questions from the consultation paper.

1. *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?*

The consultation paper includes:

“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?

We suggest that the dot point be expanded to something like this

- “requiring SA Water to understand what customers value, and to develop proposals for services and prices that respond to those needs **with the implementation developed with relevant customer input**”

The key point here is that consumer input is needed at both the ‘concept’ level as well as at the practical implementation level.

By way of example, in the lead up to SAWRD20, SA Water identified that customers wanted environmental sustainability from SA Water. A major program to implement this was the Zero Carbon Emissions Future program, ZCEF, which was not, we argue, the subject of much consultation about implementation, with some impacted households being very annoyed at the lack of consultation.

Engagement needs to include aspects of the detail in implementation, particularly that impact on specific consumers, as well as the broad concept.

2. *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?*

Specific issues in which we have a particular interest include:

- a. Renters

Uniting Communities has argued for some time that the triangular relationship between renters who pay for their water use, landlords who SA Water regard as their customer and SA Water is unhelpful particularly for private-sector renters. These households include the poorest households in South Australia and even though they pay water bills, they are not regarded as customers by SA Water and can consequently have limited access to information, hardship programs and other supports that should be available. SA Water argues that to have all customers with their own meters is expensive and inefficient. We would hope that the next regulatory period would see the start of a transition to separate metering for all customers which may impact on metering costs for the next regulatory period, but which would likely have benefits over time, particularly for lower income renters.

- b. Hardship. It is quite possible that the number of households experiencing hardship will continue to grow through the current regulatory period and into the next. We suggest that the current hardship program needs to be reviewed and expanded, with potential impact on the next regulatory determination.

- c. supply to remote and regional locations.

Issues of access to potable water in remote locations was a contested matter for SAWRD20 and we suggest that with climate change and the likelihood of lower rainfall in many remote locations, questions of access to reliable potable water for human (and stock) consumption will become increasingly vexed. We also suggest that there are people who have been self-sufficient for who will be left without water in future droughts, noting that Australia has recently experienced a La Nina weather pattern,

meaning the cycle is most likely to lead to El Nino pattern and high likelihood of drought in coming years. This leads to questions about the extent to which SA Water has a responsibility to supply. We are also acutely aware of households who currently receive water supply that is not of drinking quality. We suggest that these issues will be important for SAWRD24.

3. *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?*

Of interest to us is the role and expectation of consumers and particularly consumer organisations in implementing the various milestone. We have taken the first section of Table 2.1, Proposed timetable for SAWRD24, and expanded it to provide examples of elements of the table that we suggest are missing, these being:

- Purpose of engagement for the relevant aspect of the timetable
- Role of consumers for each of the relevant aspects.

Month(s)	Subject	Lead Party	Comment	Purpose of Engagement	Consumer Role & IAP2 level
Feb 2021	SAWRD24 F&A consultation	Commission	Sets out proposed process.	1, 3	Understand proposals Explore purpose of F&A and engagement Consider structures option IAP2: "Inform"
Feb-March 2021	Consultation to inform F&A	Commission	6 week public consultation	1	Feedback provided Explore alternatives Challenge prevailing thinking IAP2: "Consult" Could process have been more at "involve and collaborate" levels?
May 2021	SAWRD 24 Final F&A	Commission	Process and high level methodology to be confirmed	1	IAP2: "Inform"
June-Dec 2021	Initial Guidance papers	Commission	Commission provides feedback to stakeholders.  Option for guidance papers to	3, 4	Opportunity for tri-partite development of "tram tracks" for subsequent processes.

			set 'tram tracks' for key parameters.		IAP2: ideally set for "Collaborate" level of engagement, may only be "inform" level
June 21- March 2023	SAW develops draft RBP with stakeholders including: Indicative revenue and delivery envelope Long term investment plan	SA Water	Longer development period, open and inclusive process	1, 2, 4	Co-Design of engagement strategy would be a good start for SA Water to initiate.  IAP2: Strategy should aim to include mainly "involve and collaborate" level processes and clearly identify purpose of Engagement for key aspects of the strategy
etc					

Purpose of Engagement key:

1. Improve current customer outcomes / SAW efficiency
2. Culture and Behaviour change
3. Shape future outcomes
4. Build trust

We have not completed the full table, rather use this first section of the table to highlight the opportunities to more overtly consider the consumer engagement focus and expectations of the extent of consumer engagement for each action in the timetable. Note that reference is made to the level of engagement that we think is appropriate for each engagement action, with reference to the IAP2 spectrum<sup>4</sup>, intending that the "promise to the public" for each spectrum element provides a useful guide to the extent of engagement envisaged.

Active consideration also needs to be given, early in the process, to how the intended levels of consumer engagement are resourced, from the consumer side. Professor Ian Harper released the final *Report of the Competition Policy Review*<sup>5</sup> ('the Harper Review') on 31 March 2015, making 56 recommendations to government.

The Review recommended adopting choice and competition principles in human services (recommendation 2). This means that community services organisations are expected to regard 'advocacy' and 'engagement' as being services that are provided in much the same way as 'market goods,' with costs of providing the 'service' being paid for by the recipient of the service. While

<sup>4</sup> <https://www.iap2.org.au/resources/spectrum/>

<sup>5</sup> [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/Quick\\_Guides/HarperCompetition](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/HarperCompetition)

aspects of this understanding have not been fully tested, the reality is that funders expect NGO community service providers to seek payments for advocacy / engagement.

- 4. 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?*

We strongly support “SA Water develops its draft plan with stakeholders”

We suggest that an ‘input’ continuum exists with a ‘total control’ approach where SA Water, in this instance, provides all the input to the SAWRD24 process at one end and a laissez faire approach at the other end of the continuum where all input for topics for engagement was from consumers.



Neither extreme is constructive, with the optimal process being one of shared understanding and agreed focus to “problem solve” regarding the main matters of common interest or concern, somewhere in the middle of this continuum.

A useful role that ESCoSA can play is to provide leadership in setting up “tram tracks” for the preferred approach which, subject to some initial consultation, provide acceptable ranges for outcomes for key topics. The Guidance Paper process is a useful mechanism to achieve this.

- 5. 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?*

We recognise that every regulatory process for a natural monopoly will be somewhat different. The option chosen for SAWRD24 should provide a broad guide for developing the draft regulatory business plan, but allow scope for flexibility as new information, opportunities or issues arise and/or circumstances change.

- 6. 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?*

No! We do not agree with a binary choice of “challenge” or “negotiate.”

Both processes are important in a robust process focussed on consumer outcomes. Importantly there are various audiences for both potential challenge and negotiate processes and different topics within a regulatory proposal, and beyond, that can be subject to negotiation. For example, SA Water could negotiate an optimal solution to water security in a remote location, this is then part of

a much larger regulatory proposal that is challenged in aggregate, or various elements could also be challenged.

This following table provides some indicative challenge and negotiate opportunities for various audiences across the regulatory process. Not that this is indicative, not comprehensive, and need more work for any more detailed consideration, but the table does aim to show that there are various audiences for which both challenge and negotiate functions would be appropriate.

SAWRD24, Audiences and indicative opportunities for ‘challenge’ and ‘negotiate’

	Challenge	Negotiate
SA Water	Draft regulatory proposal	Specific projects / priorities
ESCoSA	Challenge role appropriate	Negotiation re ‘tram tracks’ for
Other Regulators		Priorities and trade-offs, eg with Health priorities for safe drinking water treatment.
SA Water Owner	Advocacy for Legislation change, eg re renters	Access to reservoirs
Other?		Consumer group to consumer group. (eg business and household)

In terms of priorities, we suggest that with time and good process, there is considerable potential benefit for all parties for there to be direct negotiation between SA Water and consumer interests. ESCoSA would benefit from a consumer challenge function structures in a similar way to the AER’s Consumer Challenge Panel.<sup>6</sup>

7. *Are there any other relevant matters that need to be considered in this area?*

8. *Consultation questions:*

*Consumer Experts Panel*

i. *What should be the specific role and focus of the Consumer Experts Panel?*

To provide consumer overview to the process, assisting to identify issues, to problem solve and to encourage broader consumer participation, through the networks / members of Consumer Experts Panel member

ii. *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?*

Membership of previous Panel is a good start, participation from renter, remote customer and Aboriginal community perspectives would also be highly beneficial.

<sup>6</sup> <https://www.aer.gov.au/about-us/stakeholder-engagement/consumer-challenge-panel>

- iii. *What resources are required for the successful operation of the Consumer Experts Panel (for example, access to consultants and remuneration)?*

Adequate time to plan for participation is crucial. Remuneration and access to expertise, including from the full suite of regulators is important too.

- iv. *Are there any other relevant matters that need to be considered in this area?*

*Customer challenge body*

- i. *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?*

Challenge Panel models would be useful for both SA Water and ESCoSA, with separate Challenge Panels probably optimal for the two target audiences, though, with some governance care, one challenge panel could probably challenge both both SA Water and ESCoSA. Challenge Panel(s) should be separate from all other bodies, including the Consumer Experts Panel to optimise independence of the Challenge Panel and to give them some flexibility regarding how they sought advice and input.

- ii. *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?*

Challenge Panel(s) should apply to the full regulatory process

- iii. *Where should membership be drawn from? How many members should the body have in order to be effective?*

The optimal number would be 5, with minimum number 3.

Recruitment would be best as a public call for participants, a similar process to that used by AER and by AusNet Services in setting up their Customer Forum through the NewReg trial.

- iv. *What support should be provided to the body to give it appropriate capacity to effectively participate in the review?*

Clear role, function and governance documentation along with briefings and site visits with capacity to seek expertise as required.

- v. *Are there any other relevant matters that need to be considered in this area?*

We are happy to provide verbal input to the following questions if required and to discuss anything arising from the comments made above.

9. *Does the above discussion accurately reflect stakeholder's expectations of the Regulators' Working Group?*

10. *Are there any other relevant matters that need to be considered in this area?*

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