

Economic Regulation of Minor & Intermediate Water Retailers - February 2013

The Essential Services Commission of South Australia (the Commission) is a statutory authority, established under the Essential Services Commission Act 2002 (ESC Act) with a primary objective to:

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

Under the Water Industry Act 2012 (the WI Act), we are responsible for the economic regulation of water and sewerage services in South Australia, which includes services provided by SA Water, Local Government and private operators. Our role includes industry licensing, consumer protection, performance monitoring, compliance and retail pricing matters.

We do not have any role in technical, environmental, health or social regulation. Those matters are addressed by other regulators and Government agencies. We will liaise with these other bodies, where relevant, to ensure that regulation of the water industry remains coordinated.

DEVELOPING OUR WATER REGULATORY FRAMEWORK

The Act requires us to have regard to the scale and nature of a retailer's operations when determining the appropriate form of economic regulation to apply to individual licensees. The application of our framework to the regulatory classes is set out in Table 1.

We have undertaken an extensive public consultation process over the past two years on the appropriate form of price and non-price regulatory regime to apply to these classes.

Our advice on those issues is available on our website at: <http://www.escosa.sa.gov.au/projects/162/economic-regulation-of-the-south-australian-water-industry.aspx>.

We thank all stakeholders for their contributions to date.

Table 1 - Application of consumer protection framework and price framework to regulatory classes

REGULATORY CLASS	LICENCE CATEGORY	TOTAL CONNECTIONS	PRICE REGULATION	CONSUMER PROTECTION
Minor	Very Small	Less than 100	Pricing principles for licensees and possibly exemptees (required by Pricing Order)	<i>Water Retail Code - Minor Retailers</i> and modified reporting framework
	Small	101 to 500		
Intermediate	Medium	501 to 5,000	Pricing principles for licensees and possibly exemptees (required by Pricing Order)	<i>Water Retail Code - Intermediate Retailers</i> and modified reporting framework
	Large	5,001 to 50,000		
Major	Major	Greater than 50,000	Full revenue determination for SA Water (required by Pricing Order)	<i>Water Retail Code - Major Retailers</i> and reporting framework



ECONOMIC REGULATION OF INTERMEDIATE RETAILERS

Around 50 Councils currently provide sewerage services to their local communities through Community Waste Management Systems (CWMS). There are also a small number of Councils providing water services.

Intermediate Retailers are those who sell and supply retail services to more than 500 but less than 50,000 connection points. The majority of Councils fall within this class.

Pricing Principles and Price Monitoring Framework

Our price regulation powers are established under the WI Act and the ESC Act, allowing us to make determinations regulating prices, conditions relating to prices, and price fixing factors for goods and services in the water and sewerage industries.

A Pricing Order, issued by the Treasurer in September 2012, requires us to apply the National Water Initiative (NWI) Pricing Principles in a pricing determination. The NWI Pricing Principles relate to cost recovery, pricing and transparency for drinking water, recycled and stormwater services. While there are not any NWI Pricing Principles to guide the setting of prices for sewerage services, we believe it is important to introduce similar pricing principles for these services to enhance the transparency in the determination of the prices for both water and sewerage services.

Our focus during the initial price determination period will be on developing a clear understanding of the current practices for setting and recovering the cost of sewerage services by introducing greater transparency. It is important for all water and sewerage retailers, regardless of size and scale, to ensure that prices and revenues are sufficient to ensure that the costs of prudent and efficient expenditure can be recovered. A failure to do so may result in:

- a requirement to subsidise these costs from elsewhere in the business (e.g. in the case of Councils, from general rates) and/or;
- insufficient investment, threatening the future viability of the service.

It is also important that costs are not over recovered, resulting in customers paying too much for the provision of these services, and that there are no cross subsidies between water and sewerage services, and the other services provided by Councils.

We recognise that Councils are already implementing pricing reforms to enable better understanding of the costs of providing water and sewerage services to establish prices that achieve greater cost reflectivity. However, we recognise that, in some instances, our proposed price framework represents a significant change of approach to current practices.

Our initial price determination therefore includes transitional arrangements during the initial price determination period of four years, from 1 July 2013 to 30 June 2017.

CURRENT CONSULTATION

We are currently undertaking consultation on our proposed regulatory framework for Minor and Intermediate Retailers, to apply from 1 July 2013. The proposed framework includes our draft Price Determination (pricing principles); draft consumer protection codes (*Water Retail Code-Minor Retailers and Water Retail Code-Intermediate Retailers*); and draft reporting framework (price monitoring and reporting, operational performance reporting and compliance reporting).

The elements of our draft framework, including details on where to find additional information, are set out in this fact sheet.

Submissions on our draft framework are due by close of business **Wednesday, 27 March 2013**.

Part A of our Draft Report provides further detail on our proposed price framework and is available on our website at: <http://www.escosa.sa.gov.au/library/130206-EconomicRegulation-IntermediateMinorRetailersWaterSewerageServices.pdf>.

Consumer Protection

Part 4 of the ESC Act provides us with the power to make binding industry codes for regulated industries that prescribe detailed rules of conduct and procedure across a number of discrete areas; from consumer protection matters to technical matters, such as metering and network reliability standards.

We have developed a consultation draft *Water Retail Code - Intermediate Retailers* to establish the behavioural and conduct standards which water retail licensees must comply with in their dealings with customers.

The consultation draft *Water Retail Code - Intermediate Retailers* includes provisions covering the following areas:

- **Customer Information Obligations** – customer charter; enquiries, complaints and dispute handling procedures (including escalation to an independent dispute resolution body); price disclosure; reference to Government concessions, rebates and grants; and residential customer hardship policies;
- **Pre-Contractual Obligations** – obligation to offer; application for retail services; customer sale contracts; connections and terminations;
- **Retailer Supply Obligations** – quality, safety and reliability standards (where applicable);
- **Customer Service Obligations** – billing; billing disputes (including undercharging and overcharging procedures); payments; payment difficulties; limitations on the grounds for restriction of water supply; and a prohibition on disconnecting sewerage services for non-payment;
- **Miscellaneous Provisions** – force majeure events; appointment of an operator; and recovery of amounts for illegal use.

We acknowledge that Councils are provided with various discretionary powers under the Government Act 1999 (LG Act) to levy rates, fees or charges in respect of retail services. Our consultation draft *Water Retail Code - Intermediate Retailers* sets out our proposals in relation to the exercise of those discretionary powers in relation to the sale and supply of retail services to ratepayers.

We note that while the majority of water retailers in the Minor and Intermediate retailer classes will be Councils, there are a number of private operators providing retail services to South Australian customers that are not bound by the LG Act.

Our consultation draft *Water Retail Code - Intermediate Retailers* is available on our website at: <http://www.escosa.sa.gov.au/library/130206-WaterRetailCode-IntermediateRetailers.pdf>.

ECONOMIC REGULATION OF MINOR RETAILERS

There are a number of very small and small operators that currently provide retail services to customers.

Minor Retailers are those who sell and supply retail services to up to and including 500 connection points. A small number of Councils and several private operators fall within this class.

Pricing Principles

The Pricing Order issued by the Treasurer requires that all Minor Retailers will be subject to the same form of price regulation as Intermediate Retailers.

Consumer Protection

Recognising the scale and nature of smaller operations, we are proposing a lighter-handed approach to consumer protection for Minor Retailers. Our consultation draft *Water Retail Code - Minor Retailers* extends a core set of consumer protection obligations to minor retailers, including:

- customer information provision, including escalation of complaints to an independent dispute resolution body and the application of the Minister's residential customer hardship policy;
- minimum billing requirements and prohibitions on disconnection of sewerage services for non-payment; preconditions for restriction of water services and timeliness for restoration of supply; and
- miscellaneous provisions related to force majeure events, information provision where an operator is appointed under the Act and estimation procedures where a retailer seeks to recover monies owed for illegal use of water retail services.

We are seeking comment on the appropriateness of applying this core set of consumer protections to Minor Retailers and whether any other protections should also be required.

The consultation draft *Water Retail Code - Minor Retailers* is available on our website at: <http://www.escosa.sa.gov.au/library/130206-WaterRetailCode-MinorRetailers.pdf>.

REPORTING OBLIGATIONS FOR INTERMEDIATE AND MINOR RETAILERS

Intermediate and Minor Retailers will be required to report to us in three key areas:

- Price Monitoring;
- Operational Performance; and
- Compliance with our regulatory framework.

Price Monitoring and Reporting

Monitoring price movements and market outcomes is important to the transparency and accountability of a price monitoring regime.

Our price monitoring framework is a light-handed form of price regulation that places a strong emphasis on information transparency around the costs of, and price charged for, water and sewerage services. We will not be directly involved in the price-setting process. Minor and Intermediate retailers will retain their power to set their own prices. We would only intervene with a more intrusive form of regulation, such as direct price setting, if misuse of market power was identified.

We will be commencing consultation on financial data reporting in February 2013.

Performance Monitoring and Reporting

We will complement our price monitoring framework with an operational performance and compliance monitoring framework.

Performance monitoring and reporting is a useful tool for informing customers about the level of service they are receiving and identifying reasons for any poor performance. We are not proposing to introduce any service standards or targets for Minor or Intermediate retailers initially but will consider this matter further in consultation with stakeholders during the first regulatory period (1 July 2013 to 30 June 2017).

We will be commencing consultation on operational performance data reporting in February 2013. The initial set of reporting requirements will be based on what data these retailers currently collect.

Compliance Monitoring and Reporting

Minor and Intermediate retailers will be required to report on their compliance with their licence and the relevant consumer protection code, in a similar way to current reporting requirements required for health or environmental licences. Our approach to compliance encourages entities to co-operate in the early reporting and rectification of any identified non-compliance and adopts a risk-based approach (as far as possible) in compliance monitoring and enforcement.

While our *Water Industry Guideline No. 1* sets out our finalised compliance monitoring and reporting framework for the water industry, the detailed schedules of reporting obligations for Minor and Intermediate retailers will be developed based on retailers' obligations under their licence and the relevant consumer protection code. We will consult with Intermediate and Minor Retailers on the categorisation of reporting obligations alongside the finalisation of the consumer protection codes.

Our *Water Industry Guideline No. 1* is available on our website at <http://www.escosa.sa.gov.au/library/121116-WaterIndustryGuidelineNo1-ComplianceReporting.pdf>.

FURTHER INFORMATION

Any queries relating to this consultation should be directed to the Commission.

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If you would like to keep up to date with our water industry activities and the release of papers for consultation, subscribe at <http://www.escosa.sa.gov.au/subscribe.aspx>.



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