Economic Regulation of Minor & Intermediate Retailers of Water and Sewerage Services - Final Decision - June 2013

The Essential Services Commission of South Australia (**Commission**) is the independent economic regulator of a number of industries which provide essential services in South Australia. The Commission is a statutory authority, established under the *Essential Services Commission Act 2002* (**ESC Act**) with the primary objective of:

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

The Water Industry Act 2012 (**WI Act**) commenced on 1 July 2012. The WI Act establishes the regulatory framework for the water and sewerage industry covering economic regulation, technical regulation, water planning and customer complaint handling. Under the WI Act, the Commission has various regulatory functions in relation to water and sewerage retail services in South Australia; including industry licensing, consumer protection and retail pricing.

Any person or entity wishing to provide retail services to South Australian consumers is required to obtain a licence from the Commission authorising those operations. As at 28 June 2013, 56 Minor and Intermediate Retailers have been licensed by the Commission under the WI Act, with those retailers providing retail services to around 84,000 customers. While the majority of Minor and Intermediate Retailers are Councils, there are also a small number of private operators currently providing retail services in South Australia.

DEVELOPING THE FRAMEWORK FOR MINOR AND INTERMEDIATE RETAILERS

The Final Decision on the Economic Regulatory Framework for Minor and Intermediate Retailers is the culmination of a number of years' work and public consultation. The Commission has been assisted by the submissions it has received through this extensive review process. While the Commission has not adopted all positions put in submissions, all submissions have been helpful in allowing the Commission to consider each of the relevant issues under consideration and to understanding the competing viewpoints held.

Reflecting the difference in the scale and nature of operations, the Commission is introducing a more light-handed approach to regulation of Minor and Intermediate Retailers than that applied to SA Water as the primary provider of water and sewerage services.

This fact sheet provides a summary of the key elements of the final framework, (available at: http://www.escosa.sa.gov.au/projects/182/economic-regulation-of-minor-and-intermediate-water-retailers.aspx).

INITIAL REGULATORY PERIOD (1 JULY 2013 TO 30 JUNE 2017)

The Initial Regulatory Period will be for four years (1 July 2013 to 30 June 2017). The Commission notes that implementation of the regulatory framework may present challenges for some Minor and Intermediate Retailers. While some aspects of the framework are likely to reflect current practices, the Commission acknowledges that new policies, procedures and processes will be required in some areas.

In the shorter term, Minor and Intermediate Retailers will be required to commence implementation activities in a staged manner, as set out in Table 1.

Table 1 - Implementation Timeframe

OBLIGATION	INSTRUMENT	TIMING
Water Retail Code		
• "best endeavours" to meet Code obligations	*Water Retail Code-Minor and Intermediate Retailers*	1 July 2013 to 30 September 2013
• Full compliance with Code obligations; and • Submit Enquiries, Complaints and Dispute Handling Procedures (for approval); • Submit Customer Charter; and • Submit draft Standard Contract (for private operators).	*Water Retail Code-Minor and Intermediate Retailers*	No later than 30 September 2013
Price Monitoring and Reporting		
• A Pricing Schedule setting out all water and sewerage charges to apply for the coming year compared with charges for the current year;	Water Guideline No. 3	31 August 2014
• A Pricing Policy Statement that demonstrates how the Commission's pricing principles have been applied in determining prices for each regulated retail service; and	Water Guideline No. 3	31 August 2014
• Regulatory Accounting Statements due.	Water Guideline No. 3	30 November 2014
Operational Performance Reporting		
• Data collection commences;	Water Guideline No. 3	1 July 2013
• Annual Operational Performance Report due;	Water Guideline No. 3	30 Novmeber 2014
• First Annual Performance Report released (focus on SA Water performance); and	Water Guideline No. 3	March 2014
• Second Annual Performance Report (including SA Water and Minor and Intermediate Retailers' performance).	Water Guideline No. 3	March 2015
Compliance Reporting		
• Immediate breach reporting commences; and	Water Guideline No. 1	1 July 2013
• Annual Compliance Report due.	Water Guideline No. 1	30 November 2014

WATER RETAIL CODE – MINOR AND INTERMEDIATE RETAILERS

The *Water Retail Code - Minor and Intermediate Retailers* covers the key consumer protections to apply to both Minor and Intermediate Retailers; regardless of whether the retailer is a Council or a private operator. The *Water Retail Code – Minor and Intermediate Retailers* covers the following areas:

- **Customer Sale Contracts** – requirement to obtain the Commission's approval of standard form contacts prior to publication under the WI Act;
- **Customer Information Obligations** – Customer Charters; Enquiry, Complaint and Dispute Resolution Procedures (including escalation of complaints to an independent dispute resolution body); customer information provision and the application of the Minister's residential customer hardship policy;
- **Retailer Supply Obligations** – Customer Connections; Quality, Safety and Reliability of Supply; procedures for minimising interruptions, dealing with bursts, leaks, blockages and spills; emergency reporting for customers and estimation procedures where a retailer seeks to recover monies owed for illegal use of water retail services;
- **Customer Service Obligations** – billing; billing disputes (including undercharging and overcharging); minimum payment methods and flexible payment arrangements; and
- **Restrictions, Disconnections and Restoration of Supply** - prohibitions on disconnection of sewerage services for non-payment; preconditions for restriction of water services and timeliness for restoration of supply.

MORE INFORMATION – WATER RETAIL CODE

Refer to Part A of the **Final Decision**, the **Water Retail Code – Minor and Intermediate Retailers** and accompanying **Explanatory Memorandum** for further information.

"Best Endeavours" during the implementation period (until 30 September 2013)

While the *Water Retail Code - Minor and Intermediate Retailers* will apply from 1 July 2013, consistent with the Commission's approach to implementation of new regulatory requirements in other industries, Minor and Intermediate Retailers will be provided with a 3 month implementation period (until the end of September 2013) to allow for various policies and procedures to be developed and submitted to the Commission, for approval, where required.

During the initial 3 month implementation period, Minor and Intermediate Retailers will be expected to use their best endeavours to implement the requirements of the W*ater Retail Code – Minor and Intermediate Retailers*, working towards full compliance by 30 September 2013. The Commission's definition of best endeavours in the regulatory context is *"to act in good faith and use all reasonable efforts, skill and resources to achieve an outcome in the circumstances"*. The WRC-MIR Explanatory Memorandum contains further discussion on how the Commission assesses whether best endeavours have been employed.

Standard contract model

Section 36 of the WI Act provides a mechanism for the formation of deemed statutory contracts between retailers and customers.

The Commission will not require Councils to adopt the contractual model at this point in time. However, where a Council chooses to utilise the statutory contact provisions under the WI Act, it must first seek the Commission's approval of its draft standard contract (or contracts).

The Commission will require private operators to utilise the contractual model, and will work with relevant parties to assist in developing appropriate contracts in coming months.

Customer Charters

Where the contractual model is utilised, a Customer Charter should be used by Minor and Intermediate Retailers to inform customers of their basic rights and responsibilities under the standard customer contract. Where Minor and Intermediate Retailers do not utilise the statutory contract model, the Customer Charter will be the principal document informing customers of their basic rights and responsibilities in the provision of water and/or sewerage services.

Further guidance on the contents of Customer Charters has been prepared by the Commission and, while its use is not prescribed, can be utilised by Minor and Intermediate Retailers. All Minor and Intermediate Retailers need to provide their Customer Charter to Commission by end of September 2013.

Enquiries, complaints and dispute resolution

Under their Enquiries, Complaints and Dispute Resolution Procedures, Minor and Intermediate Retailers must provide for escalation of complaints to an independent dispute resolution body in the event that the dispute cannot be resolved between the customer and the retailer.

Intermediate Retailers with 5,000 connection points or more will be required to join the Energy and Water Ombudsman SA (**EWOSA**) Scheme by the end of September 2013. While the Commission expects that most other Minor and Intermediate Retailers will choose to join the EWOSA Scheme, other independent, external dispute resolution bodies can be nominated by the retailer in their draft Enquiries, Complaints and Dispute Handling Procedures.

All Minor and Intermediate Retailers must provide their draft Enquiries, Complaints and Dispute Handling Procedures to the Commission by the end of September 2013.

PRICE DETERMINATION

It is important for all water retailers, regardless of size and scale, to ensure that prices and revenues are sufficient to recover the prudent and efficient costs of providing those services.

Unlike the revenue determination process for SA Water, (where the Commission undertakes a detailed examination of SA Water's costs), a more light-handed approach to price regulation will be applied to Minor and Intermediate Retailers during the Initial Regulatory Period. While Minor and Intermediate Retailers will retain the responsibility for determining their own prices, the Commission will be introducing a greater level of transparency into the price setting process by requiring Minor and Intermediate Retailers to take certain Pricing Principles into account and demonstrate to the Commission that they have done so in determining their costs and developing their prices.

A Pricing Order issued by the Treasurer under the WI Act requires that the Commission adopt or apply the National Water Initiative (**NWI**) Pricing Principles (other than the Principles for Recovering the Costs of Water Planning and Management Activities) when making a price determination for retail services under the WI Act. The NWI Pricing Principles relate to cost recovery, pricing and transparency of drinking water, recycled water and stormwater services. Although the NWI Pricing Principles do not apply to sewerage services, the Commission has decided to treat sewerage services, including Community Wastewater Management Systems (**CWMS**), in a like manner to drinking water services, providing consistency in price regulation between retail services.

MORE INFORMATION – PRICE DETERMINATION

Refer to Part B of the **Final Decision** for further information on the Statement of Reasons and the Price Determination.

The relevant pricing principles for each retail service are provided below.

Drinking Water Services

Minor and Intermediate Retailers supplying drinking water services will be required to demonstrate how they have taken the following NWI Pricing Principles into account in determining their costs and developing their prices.

RECOVERY OF CAPITAL EXPENDITURE

- Principle 1: Cost recovery for new capital expenditure
- Principle 2: Valuation of new assets
- Principle 3: Valuation of legacy assets
- Principle 4: Recovery of legacy capital expenditure
- Principle 5: Rolling forward asset values after the legacy date
- Principle 6: Contributed assets

SETTING URBAN WATER TARIFFS

- Principle 1: Cost recovery
- Principle 2: Tariff structures
- Principle 3: Cost reflective tariffs
- Principle 4: Setting the service availability charge
- Principle 5: Pricing transparency
- Principle 6: Over recovery of revenue
- Principle 7: Differential water charges
- Principle 8: Setting developer charges
- Principle 9: Capping developer charges
- Principle 10: Revenue from developer charges

Sewerage Services (including CWMS)

Minor and Intermediate Retailers supplying sewerage services will be required to demonstrate how they have taken the following NWI Pricing Principles into account in determining their costs and developing their prices.

RECOVERY OF CAPITAL EXPENDITURE

- Principle 1: Cost recovery for new capital expenditure
- Principle 2: Valuation of new assets
- Principle 3: Valuation of legacy assets
- Principle 4: Recovery of legacy capital expenditure
- Principle 5: Rolling forward asset values after the legacy date
- Principle 6: Contributed assets

URBAN WATER TARIFFS

- Principle 1: Cost recovery
- Principle 4: Setting the service availability charge
- Principle 5: Pricing transparency
- Principle 6: Over recovery of revenue
- Principle 7: Differential water charges
- Principle 8: Setting developer charges
- Principle 9: Capping developer charges
- Principle 10: Revenue from developer charges

Recycled Water and Stormwater Services

Minor and Intermediate Retailers supplying recycled water and/or stormwater services will be required to demonstrate how they have taken the following NWI Pricing Principles into account in determining their costs and developing their prices.

RECYCLED WATER AND STORMWATER USE

- Principle 1: Flexible regulation
- Principle 2: Cost allocation
- Principle 3: Water usage charge
- Principle 4: Substitutes
- Principle 5: Differential pricing
- Principle 6: Integrated water resource planning
- Principle 7: Cost recovery
- Principle 8: Transparency
- Principle 9: Gradual approach

Other Ancillary and Related Retail Services

In determining the costs for other ancillary and related retail services, Minor and Intermediate Retailers must apply the following principles in addition to the relevant NWI Pricing Principles:

- **Principle 1:** Where a service is provided for the sole benefit of the recipient, the beneficiary should pay the full efficient cost of the service, and other consumers should not be required to contribute to the cost of the service;
- **Principle 2:** Where a service is provided to a distinct group of customers, prices to a customer should reflect the incremental cost of supplying the service to the customer, and a reasonable allocation of the fixed costs of providing the service, where relevant;
- **Principle 3:** Prices should reflect the efficient cost of the particular service provided, although in circumstances where the cost of implementing differentiated prices to different customers is likely to outweigh the benefits, non-differentiated prices can be implemented; and
- **Principle 4:** Retailers must be able to provide transparent information to customers on how the costs for these services have been calculated, or are to be applied, and must be able to support their position in the event of a dispute.

REPORTING OBLIGATIONS

Minor and Intermediate Retailers will have ongoing monitoring and reporting obligations in respect of three areas: Price Monitoring and Reporting; Operational Performance Reporting and Compliance Reporting.

Figure 1 summarises the reporting requirements in Water Guideline No. 3 (Price Monitoring and Reporting and Operational Performance Reporting) and Water Guideline No. 1 (Compliance Reporting). Water Guideline No. 1 and Water Guideline No. 3 will become operational at the start of the Initial Regulatory Period (1 July 2013).

MORE INFORMATION – REPORTING OBLIGATIONS

Refer to Part C of the **Final Decision, Water Guideline No. 1, Water Guideline No. 3** and the accompanying **Explanatory Memorandum** for further information.

Price Monitoring and Reporting

Price monitoring is a light-handed form of price regulation where the regulator observes certain aspects of the regulated business, such as prices and/or costs, but is not directly involved in the price-setting process. Minor and Intermediate Retailers will be required to provide annual *Regulatory Accounting Statements* that cover all of their business activities relating to the provision of water and sewerage services, as set out in Water Guideline No. 3.

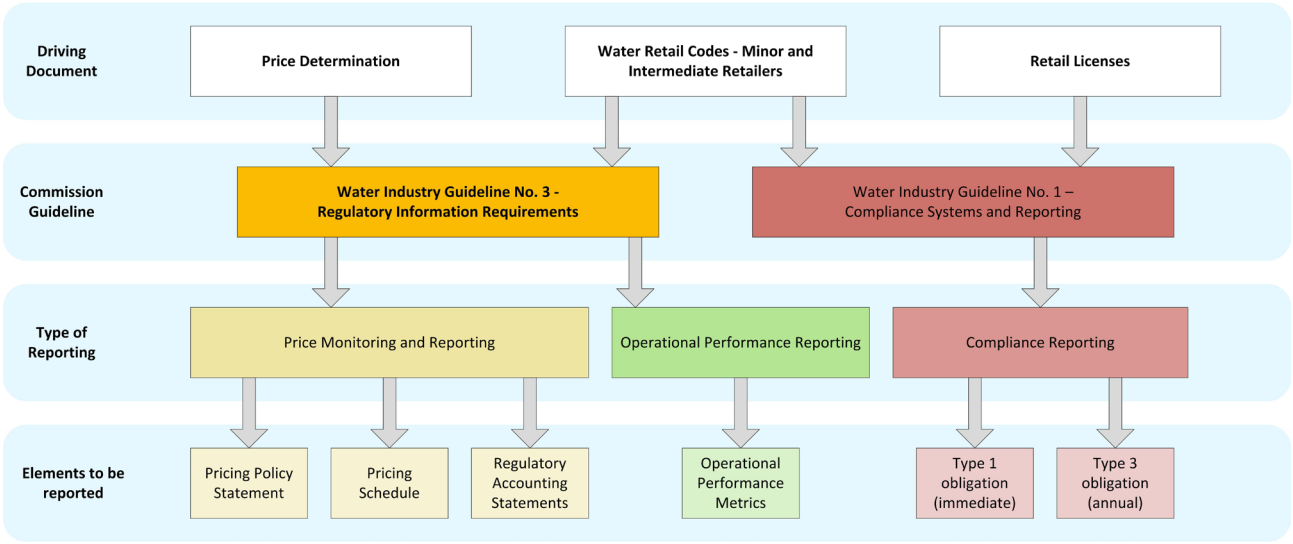
The financial information required includes:

- operating costs and income split into specified activities or revenue sources; and
- capital expenditure split into investment drivers and asset categories.

The *Regulatory Accounting Statements* must be provided to the Commission by 30 November each year, accompanied by a Responsibility Statement (verifying that the data provided by the retailer is accurate and can be relied upon by the Commission) signed by the retailer's Chief Executive Officer (or equivalent). The first set of *Regulatory Accounting Statements* are due by 30 November 2014.

To satisfy the public information disclosure arrangements, Minor and Intermediate Retailers will be required to maintain a *Pricing Schedule* and an accompanying *Pricing Policy Statement*.

Figure 1 - Reporting Framework for Minor and Intermediate Retailers



The *Pricing Schedule* must provide:

- prices for the current year;
- prices that applied for the previous financial year; and
- percentage change in those prices.

The *Pricing Policy Statement* must demonstrate how the pricing principles have been applied in determining prices for each regulated retail service.

Minor and Intermediate Retailers must provide their *Pricing Schedule* and *Pricing Policy Statement* to the Commission by the end of August each year (with the first schedules due by 31 August 2014).

Minor and Intermediate Retailers will be required to clearly disclose both their *Pricing Schedule* and *Pricing Policy Statement* to their customers and ensure they are permanently available on their website. The Commission will develop additional guidance by the end of 2013 to assist Minor and Intermediate Retailers to develop their *Pricing Schedule* and *Pricing Policy Statement*.

MORE INFORMATION – FINANCIAL REPORTING

Refer to **Water Industry Guideline 3 –Regulatory Information Requirements** and the accompanying **Explanatory Memorandum** for further information.

Operational Performance Reporting

Performance monitoring and reporting provides a means by which the Commission can inform customers about the level of service they are receiving (at an aggregate level) and reasons for any poor performance. It allows for the comparison of business performance, by gauging relative performance within an industry (comparative competition) or with businesses performing comparable operations in other industries; and identifies baseline performance of individual businesses, providing incentives for improvement.

Performance monitoring also provides the information and data required for developing service standards (or targets) and for ongoing assessment of compliance with such standards; and informs the decision making processes of regulatory agencies, water businesses and the Government.

Minor and Intermediate Retailers will be required to report annually on the following metrics:

- customer complaints;
- restrictions & legal action for non-payment;
- financial support measures;
- infrastructure reliability; and
- statistical information.

Operational Performance Reports must be provided to the Commission annually by no later than 30 November each year, accompanied by a Responsibility Statement (verifying that the data provided by the retailer is accurate and can be relied upon by the Commission) signed by the retailer's Chief Executive Officer (or equivalent). The first Operational Performance Report must be provided to the Commission by 30 November 2014.

MORE INFORMATION – OPERATIONAL PERFORMANCE REPORTING

Refer to **Water Industry Guideline 3 –Regulatory Information Requirements** and the accompanying **Explanatory Memorandum** for further information.

Compliance Reporting

The Commission has established Water Industry Guideline 1 – Compliance Systems and Reporting (**Water Guideline No. 1**) which:

- encourages regulated entities to actively cooperate in the early reporting and rectification of any identified non-compliance;
- uses a risk based approach as far as possible in both compliance monitoring and enforcement, based on the likelihood of a breach of a regulatory obligation and the possible consequences (e.g. on South Australian consumers) of such a breach; and
- reserves stronger enforcement action (e.g. prosecution) for more serious cases involving wilful or systemic non-compliances with major consequences, or circumstances in which other processes have not had the desired remedial effect.

The Commission adopts a multi-tiered approach to compliance reporting, based on the assessment and categorisation of obligations arising under applicable regulatory instruments (e.g. the water retail licence and the *Water Retail Code – Minor and Intermediate Retailers)*.

The Commission expects that Minor and Intermediate Retailers will monitor compliance with all regulatory obligations throughout the year and resolve any potential non-compliances as they arise. However, the Commission only requires reporting on these regulatory obligations as follows:

- **Type 1:** those regulatory obligations which are identified as being of such importance that a breach of one gives rise to an immediate requirement to provide to the Commission a Material Breach Compliance Report; and
- **Type 3:** all regulatory obligations other than those identified as Type 1, a breach of which must be identified to the Commission in the Annual Compliance Report.

Material Breach Compliance Reports must be provided to the Commission in the form set out in Guideline No. 1 if a Minor or Intermediate Retailer breaches a Type 1 obligation, or an obligation that the Commission or a retailer otherwise considers to be "material". This report must be provided as soon as the retailer becomes aware of the breach and, in any event, no later than 3 days after becoming aware that the breach has occurred.

Annual Compliance Reports must be provided to the Commission by Minor and Intermediate Retailers in respect of all Type 1 and Type 3 obligations in the form set out in Water Guideline No. 1, by 30 November of each reporting year, with the first report due by 30 November 2014.

The Commission will continue to take a collaborative approach in relation to compliance and as such, encourages Minor and Intermediate Retailers to remain in regular contact with the Commission, should any issues or questions arise.

The Commission also has a range of stronger administrative enforcement options provided for in the ESC Act and relevant industry regulation acts, such as verbal and written warnings, formal Warning Notices and prosecutorial and disciplinary powers (reserved for the more serious matters of non-compliance). The Commission has published an **Enforcement Policy**, providing guidance on the criteria and processes it uses in determining the type of enforcement action required on a case by case basis.

MORE INFORMATION – COMPLIANCE REPORTING

Refer to **Water Industry Guideline 1 – Compliance Systems and Reporting** and **Enforcement Policy** for further information.

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