

# WATER RETAIL CODE – MINOR AND INTERMEDIATE RETAILERS (WRC-MIR/01)

*Explanatory Memorandum*

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Enquiries concerning the currency of this Explanatory Memorandum should be addressed to:

Essential Services Commission of South Australia  
GPO Box 2605  
Adelaide SA 5001

Telephone: (08) 8463 4444  
Facsimile: (08) 8463 4449  
Freecall: 1800 633 592 (SA and mobiles only)  
E-mail: [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au)  
Web: [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au)

The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. 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*. For more information, please visit [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au).

# TABLE OF CONTENTS

- Glossary of Terms \_\_\_\_\_ iii
- Introduction \_\_\_\_\_ 1
- 1. Preliminaries \_\_\_\_\_ 2
  - 1.1 Commencement transitional provision \_\_\_\_\_ 2
- 2. Customer Sale Contracts \_\_\_\_\_ 3
  - 2.1 Standard terms and conditions \_\_\_\_\_ 3
  - 2.2 Terminations \_\_\_\_\_ 3
  - 2.3 Force majeure \_\_\_\_\_ 3
- 3. Customer Information Obligations \_\_\_\_\_ 4
  - 3.1 Customer Charters \_\_\_\_\_ 4
  - 3.2 Enquiries, Complaints and Dispute Resolution procedures \_\_\_\_\_ 4
  - 3.3 Customer communications \_\_\_\_\_ 5
  - 3.4 Price disclosure \_\_\_\_\_ 5
  - 3.5 Customer Hardship Policies \_\_\_\_\_ 5
  - 3.6 Life support equipment \_\_\_\_\_ 5
- 4. Retailer Supply Obligations \_\_\_\_\_ 5
  - 4.1 Customer connection policy \_\_\_\_\_ 6
  - 4.2 Quality, safety and reliability of supply \_\_\_\_\_ 6
  - 4.3 Information to be provided to customers \_\_\_\_\_ 6
  - 4.4 Powers under other Acts \_\_\_\_\_ 6
  - 4.5 Retailer right to recovery for illegal use \_\_\_\_\_ 6
- 5. Customer Service Obligations \_\_\_\_\_ 7
  - 5.1 Billing \_\_\_\_\_ 7
  - 5.2 Where a tariff or tariff types has changed \_\_\_\_\_ 7
  - 5.3 Payment methods \_\_\_\_\_ 7
  - 5.4 Flexible payment arrangements \_\_\_\_\_ 8
  - 5.5 Payment difficulties \_\_\_\_\_ 8
  - 5.6 Billing disputes \_\_\_\_\_ 8
  - 5.7 Undercharging \_\_\_\_\_ 8

5.8	Overcharging	8
5.9	Debt recovery	8
6.	Restriction of water supply	9
7.	Disconnections	9
8.	Restoration of supply	9
APPENDIX A	Customer Charter – Guidance	10

## GLOSSARY OF TERMS

<b>Act</b>	<i>Water Industry Act 2012</i>
<b>Commission</b>	Essential Services Commission of South Australia
<b>Customer</b>	a person who owns land in relation to which a retail service is provided and includes: <ul style="list-style-type: none"> <li>• where the context requires, a person seeking the provision of a retail service; and</li> <li>• in prescribed circumstances—a person supplied with retail services as a consumer or user of those services (without limiting the application of this definition to owners of land); and</li> <li>• a person of a class declared by the regulations to be customers.</li> </ul>
<b>CWMS</b>	Community Wastewater Management System
<b>DCSI</b>	Department for Communities and Social Inclusion
<b>ESC Act</b>	<i>Essential Services Commission Act 2002</i>
<b>Government</b>	Government of South Australia
<b>Intermediate Retailer</b>	means a retailer which provides retail services to more than 500 and up to and including 50,000 connections
<b>LGA</b>	Local Government Association
<b>Minor Retailer</b>	means a retailer which provides retail services to up to and including 500 connections
<b>Non-residential Customer</b>	a customer other than a residential customer
<b>Residential Customer</b>	a customer who acquires a retail service primarily for domestic use.
<b>Retailer</b>	a water industry entity licensed in accordance with Part 4 of the Act.
<b>Retail Service</b>	has the same meaning as given to the term in the Act and covers a water service and/or a sewerage service supplied through a reticulated system, including: <ul style="list-style-type: none"> <li>• drinking water services;</li> <li>• non-drinking water services; and</li> <li>• sewerage services.</li> </ul>
<b>Sewerage Service</b>	has the same meaning as given to the term in the Act
<b>Water Retail Code – Minor and Intermediate Retailers</b>	An industry Code made by the Commission, in accordance with Part 4 of the ESC Act
<b>WRC-MIR</b>	means the <i>Water Retail Code – Minor and Intermediate Retailers</i>
<b>Water Service</b>	has the same meaning as given to the term in the Act



## INTRODUCTION

The *Water Industry Act 2012 (the Act)* requires that the Commission establish a consumer protection framework through the use of industry codes made under Part 4 of the *Essential Services Commission Act 2002 (ESC Act)*. Industry codes prescribe detailed rules of conduct and procedure that must be followed by industry participants. The use of industry codes, made in accordance with the requirements of the ESC Act, allows for a higher degree of regulatory flexibility, while maintaining appropriate scrutiny, accountability and transparency of process in their development. Industry codes can cover any number of areas within a regulated industry, from consumer protection to technical matters.

The Commission has developed a water industry code—the *Water Retail Code—Minor and Intermediate Retailers (WRC-MIR/01)*—to apply to Minor Retailers (i.e. those licensees with up to 500 connections) and Intermediate Retailers (i.e. those licensees with greater than 500 and up to and including 50,000 connections) from 1 July 2013.

The *Water Retail Code – Minor and Intermediate Retailers* is the principal consumer protection document setting out the behavioural standards and minimum requirements to be complied with by Minor and Intermediate Retailers when dealing with their customers.

This Explanatory Memorandum provides a plain English description of the provisions of the *Water Retail Code – Minor and Intermediate Retailers*.

# 1. PRELIMINARIES

This Part of the Code sets out preliminary matters. It reflects the Commission’s legal authority to make and amend the Code under the Act and the ESC Act and sets the commencement date for the Code at 1 July 2013 (subject to the transitional provision set out in 1.1 below). It establishes that the Code applies to the provision of retail services as defined under the Act. It acknowledges that the Code does not contain all obligations applying to retailers and explains how the Code is to be read and what certain expressions and defined terms mean.

The Code indicates where individual provisions have different application between water services and sewerage services.

It establishes the application of the Code as:

- ▲ Minor Retailers;
- ▲ Intermediate Retailers;
- ▲ All residential customers, unless a documented non-standard agreement is entered into with the residential customer for the provision of retail services after the commencement of the Code, which includes recognition that the Code will not apply in respect of that agreement (to the extent the Code is not intended to apply); and
- ▲ All non-residential customers, unless:
  - a documented non-standard agreement is entered into with a non-residential customer for the provision of retail services after the commencement of the Code, which includes recognition that the Code will not apply in respect of that agreement; or
  - a documented agreement was in place for the provision of retail services prior to the commencement of the Code and the non-residential customer consents to the continuation of that arrangement, which includes recognition that the Code will not apply in respect of that agreement.

This allows ongoing flexibility for retailers and customers to maintain existing contractual arrangements for the provision of retail services as defined under the WI Act, including but not limited to bilateral contracts for the sale and supply of reuse or recycled water to non-residential customers.

## 1.1 *Commencement transitional provision*

Recognising the requirement for an initial implementation period, this clause clarifies that, for the period 1 July 2013 to 30 September 2013, the requirement to meet each regulatory obligation arising under the Code will be a “best endeavours” requirement. For the avoidance of doubt, this means that where a regulatory obligation is mandatory, for the period 1 July 2013 to 30 September 2013 a retailer will satisfy that regulatory obligation where it can demonstrate that it has used its best endeavours to do so.



The Commission defines best endeavours to mean “to act in good faith and use all reasonable efforts, skill and resources”. Although a best endeavours obligation is not as onerous as an absolute obligation (like “must” or “shall”), the test to be applied in determining whether a party has satisfied its obligation is that of what is prudent and reasonable in the circumstances. Best endeavours are something less than the efforts which go beyond the bounds of reason, but are considerably more than casual and intermittent activities. They must at least be doing all that a reasonable person could reasonably do in the circumstances. An obligation to use best endeavours means a party is required to act honestly, reasonably and make a positive effort to perform the relevant obligation.

## 2. CUSTOMER SALE CONTRACTS

This section of the Code sets out the respective rights and obligations of customers and retailers in establishing an agreement for the provision of retail services under a standard customer sale contract and also provides for the termination of a standard customer sale contract by a customer.

The Commission notes that this section of the Code only applies where the standard contract provision under the Act is used by a retailer.

### 2.1 *Standard terms and conditions*

This clause establishes the requirement for retailers to obtain the Commission’s approval of a standard contract for the sale and supply of retail services to customers, prior to publication of that standard contract in accordance with section 36 of the Act.

While this clause allows retailers to develop their own standard contract (or multiple standard contracts for various classes of customers), the Commission will develop a model standard contract that could be used by Minor and Intermediate Retailers. The model standard contract would not limit the ability for Minor and Intermediate Retailers to develop their own standard contracts for various classes of customers.

### 2.2 *Terminations*

This clause establishes the requirement for retailers to provide customers with the right to terminate the retail services provided to a customer’s supply address in their standard contract. It acknowledges that a retailer may still require that customer to pay amounts permitted under the Act, the LG Act or any other relevant legislation, even where a customer has requested a termination or disconnection.

### 2.3 *Force majeure*

This clause sets out the requirements on retailers when they declare a force majeure event has occurred. A “force majeure” event is where a retailer cannot meet an obligation as a direct result of an event outside of the retailer’s control.

## 3. CUSTOMER INFORMATION OBLIGATIONS

This section of the Code sets out the minimum requirements for the provision of information by retailers to customers.

### 3.1 *Customer Charters*

This clause establishes the requirement for retailers to develop and provide Customer Charters that communicate key rights and obligations of each the retailer, the customer and a tenant in plain English to redress the imbalance of knowledge between a customer and a retailer.

The Commission considers Customer Charters to be an important consumer protection measure to explain the rights and obligations of retailers and customers under the new water consumer protection regulatory framework. The Commission notes that a Customer Charter can be a short, summary document, and thus does not expect this obligation to be onerous.

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. This guidance is provided in Appendix A.

### 3.2 *Enquiries, Complaints and Dispute Resolution procedures*

This clause establishes the requirement for retailers to develop Enquiries, Complaints and Dispute Resolution procedures that clearly set out how customers can make an enquiry or complaint about the water and sewerage retail services they receive. It includes the requirement for the procedures to provide customers with the ability to have their enquiry or complaint escalated first within the retailer and then subsequently to an external independent party for resolution, in the event that the complaint remains unresolved.

The Commission will reserve its power to require any Minor or Intermediate Retailer to join EWOSA's scheme, with only Intermediate Retailers with 5,000 connection points or more required to join the scheme in the first instance, on the basis that a retailer with a larger number of connection points is more likely to receive a greater number of complex complaints.

All other Minor and Intermediate Retailers will have the option of joining EWOSA's scheme of their own volition or identifying an alternative dispute resolution body in their Enquiries, Complaints and Dispute Resolution Procedures. For the avoidance of doubt, where EWOSA is not utilised as the independent dispute resolution body, a Minor or Intermediate Retailer must nominate the relevant body in its Enquiries, Complaints and Dispute Resolution procedures.

### 3.3 *Customer communications*

This clause expressly allows retailers to provide information to customers via an electronic email address, where the Code requires information to be provided “in writing”. A customer must provide express conscious agreement for a retailer to rely on use of electronic communications as the primary communications channel.

This clause also requires retailers to provide residential customers with access to multi-lingual services.

### 3.4 *Price disclosure*

This clause establishes the requirement for retailers to publicly disclose any prices, fees and charges applicable to the provision of a retail service. It explicitly requires retailers to include details of any fees or charges that the retailer will charge a customer irrespective of the consumption of a retail service at the customer’s supply address, (e.g. where vacant land attracts fees and charges), as allowed under the Act, the LG Act or any other relevant legislation.

This clause clarifies the requirement for Minor and Intermediate Retailers to publish retail services fees and charges on their websites, ensure that such information is generally available in their offices and to provide that information to customers, upon request.

### 3.5 *Customer Hardship Policies*

This clause reflects the requirement under the WI Act for retailers to have an approved residential customer Hardship Policy in place. This clause reflects the Commission’s role in approving and reviewing retailers’ Residential Customer Hardship Policies, where appropriate. It also clarifies the requirement for retailers to publish their approved Residential Customer Hardship Policy on their website, and ensure that customers are generally aware of its Residential Customers Hardship Policy.

### 3.6 *Life support equipment*

This clause establishes information provision requirements for retailers in relation to supply addresses where a person requiring approved life support equipment resides. This clause applies only to water retail services.

## 4. RETAILER SUPPLY OBLIGATIONS

This section of the Code sets out the quality and reliability standards to be met by retailers providing retail services.

#### *4.1 Customer connection policy*

This clause establishes the requirement for retailers to have and publish a customer Connection Policy on their website (where the Commission requires a retailer to develop such a policy) and provide a copy of that policy to a customer, upon request. The Connection Policy must set out the retailer's requirements where a new connection point is required prior to the provision of retail services to a customer.

#### *4.2 Quality, safety and reliability of supply*

This clause sets out retailers' requirements around the quality, safety and reliability of the supply of retail services. It requires retailers to develop policies, practices and procedures to minimise supply interruptions and deal with a burst, leak, blockage or spill in respect of its network and provides for reporting on events where action is required, where requested by the Commission.

It requires retailers to provide an emergency telephone service for the notification of emergencies and faults to enable customers to ascertain details and the expected duration of any interruption to supply.

#### *4.3 Information to be provided to customers*

This clause requires retailers to provide customers with advanced notice of any planned interruptions to supply at the customer's supply address, expressly allowing such notice to be provided by radio or newspaper where it is not practicable to send a notice in writing due to the number of customers affected.

It also requires retailers to provide customers with advanced notice prior to entering the customer's supply address to connect, disconnect or restrict the supply of retail services or for the inspection, repair or testing of a water or sewerage installation. It also requires retailers to provide an explanation for any unplanned maintenance or interruption to supply of retail services to the customer's supply address, upon request.

#### *4.4 Powers under other Acts*

This clause expressly notes that none of the obligations in the Code will prevent a retailer from exercising any power, or complying with any direction, order or requirement under various pieces of legislation governing emergency and/or disaster situations.

#### *4.5 Retailer right to recovery for illegal use*

This clause recognises the right for retailers to recover amounts owed as a result of a customer's illegal use of retail services, but requires the retailer to use an estimation method approved by the Commission to calculate the amount to be recovered from a customer.

## 5. CUSTOMER SERVICE OBLIGATIONS

This Part of the Code sets out the minimum requirements to be fulfilled by retailers in respect of billing for and payment of retail services by customers, including the requirement to offer flexible payment arrangements for residential customers. Distinction is made between residential and non-residential customers. Residential customers are afforded greater protections and provided with multiple opportunities to establish flexible payment arrangements to ensure that residential customers do not have their retail services restricted or disconnected due to an inability to pay alone.

### 5.1 *Billing*

This clause sets out the requirements on retailers to ensure that customers receive accurate and timely billing information that allows customers to verify that their bills have been correctly calculated and to monitor and manage their consumption. Processes for review and adjustment of bills are established to ensure that customers that have not been billed correctly can receive timely and accurate rectification of bills.

The Commission is not proposing to require Councils to implement stand-alone billing systems or issue separate invoices for retail services. However, this clause requires that where a rates notice is used for retail services, it must include certain minimum information (e.g. separately identifiable line items for retail services, including a breakdown of any fixed and variable charges, and separately identify any relevant State Government concessions, rebates or grants).

In respect of the frequency of bills, the Commission notes that section 181(15) of the LG Act provides that a Council may decide that rates of a particular kind will be payable in more than four instalments in a particular financial year, and that such instalments must be payable on a regular basis over the whole of the financial year, with the ratepayer provided with at least 30 days' notice before an instalment falls due. This section of the Code requires Councils to exercise their discretion in this area in respect of water or sewerage charges, upon request by a residential customer.

### 5.2 *Where a tariff or tariff types has changed*

This clause establishes the requirements on retailers where the tariff type (e.g. residential or non-residential) or tariff rates applying to a customer change within a billing cycle. Establishes the requirement for retailers to apportion the charges due and payable within a billing period between the new and old tariff rates based on the number of days the customer consumed retail services before and after the change in the charges for retail services.

### 5.3 *Payment methods*

This clause establishes the minimum payment method requirements for retailers to allow customers to pay bills through a variety of methods. Mandated minimum payment options

ensure that all customers have a range of accessible payment options and are able to pay accounts through a range of no cost or low cost methods, irrespective of their location. It explicitly requires retailers to allow residential customers to make payments through Centrepay, upon request by the customer.

#### *5.4 Flexible payment arrangements*

This clause requires retailers to provide residential customers with various flexible payment arrangements including payments in advance, short-term bill extensions, instalment plans and bill referrals.

#### *5.5 Payment difficulties*

This clause requires retailers to have systems and processes in place to monitor and provide assistance to customers that may be experiencing payment difficulties. It requires retailers to provide information on various forms of assistance available to residential customers experiencing payment difficulties.

#### *5.6 Billing disputes*

This clause establishes the requirements on retailers in reviewing a customer bill that is in dispute. It is important to have a clear process to be followed where a bill is in dispute, including timelines to ensure resolution can be achieved in a timely manner. However, it is reasonable to require customers to pay any amount that is not in dispute while the bill is being reviewed.

#### *5.7 Undercharging*

This clause establishes the requirements on retailers in seeking to recover amounts due and payable for retail services that have been under recovered. It limits the amount to be recovered to the amount undercharged in the 12 months prior to the error occurring.

#### *5.8 Overcharging*

This clause requires retailers to refund amounts that customers have been overcharged for retail services.

#### *5.9 Debt recovery*

This clause limits the ability for retailers to commence debt recovery proceedings against residential customers where the residential customer continues to make payments in accordance with any flexible payment arrangements or where the retailer has not appropriately assessed the residential customer's eligibility for payment assistance or participation in its Hardship Program. It expressly prohibits the commencement of additional debt recovery action where the retailer has fitted a water flow restriction device

at the customer's supply address as the means of encouraging the customer to pay any outstanding amounts for water retail services.

The Commission notes that section 155(9) of the LG Act allows Councils to recover prescribed service charges as if they were rates (even as against non-rateable land).

## 6. RESTRICTION OF WATER SUPPLY

This clause sets out the requirements on retailers in relation to restriction of a customer's water services for non-payment of a bill or bills. A retailer's ability to restrict a customer's water retail services differs between residential customer and non-residential customers. This clause also establishes the requirement for retailers to ensure a restricted water service delivers water at the minimum flow rate determined by the Commission from time to time.

## 7. DISCONNECTIONS

This clause establishes a general prohibition on retailers disconnecting customers' water services and sewerage services for non-payment of a bill or bills by a customer. Disconnection of customer's water services or sewerage services are only permitted where the customer has requested the disconnection or used those retail services illegally. This clause explicitly requires retailers to inform customers of any fees or charges that they will remain liable for under the Local Government Act 1999 or the Roxby Downs (Indenture Ratification) Act 1982 even after the service has been disconnected (e.g. a service availability charge).

## 8. RESTORATION OF SUPPLY

This clause establishes the requirement for a retailer to restore retail services to customers within a reasonable time after the customer has paid any reasonable reconnection or restoration fees. The Commission acknowledges that current practice in this area is likely to differ between Councils and is seeking comment on the appropriate timeframe for restoration of supply in rural and remote areas.

It expressly prohibits a retailer from charging a residential customer a reconnection fee where that customer is experiencing financial hardship and should have been assessed as eligible for the retailer's Hardship Program, so long as the residential customer agrees to participate in the retailer's Hardship Program upon reconnection.

## APPENDIX A CUSTOMER CHARTER – GUIDANCE

The *Water Industry Act 2012* provides for water industry entities licensed by the Commission to develop and publish standard form customer contracts. With the exception of private operators, Minor and Intermediate Retailers are not currently required to develop a standard form contract, however, where this mechanism is utilised, the draft contract must be submitted to the Commission for approval, prior to publication.

Where the contractual model is utilised, the 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.

This document provides additional guidance on how the minimum requirements for Customer Charters can be fulfilled by Minor and Intermediate Retailers. Use of this document is not required; it serves as an illustrative example only. Retailers should ensure that Customer Charters use plain English consumer-friendly language. There is no prescribed length for Customer Charters. Provided all minimum information is included, a Customer Charter may only be 1-2 pages.

### *Introduction*

This section should provide a brief description of the retailer, including details of how the water and/or sewerage services fit within overall Council operations (where relevant). An expression of the service values underpinning the water and/or sewerage operations of the retailer could also be included.

### *Retail services provided*

This section should provide a list of water and/or sewerage products and services provided by the retailer. Each service should be clearly and individually identifiable. It should also include details on where to obtain pricing information for each service.

### *Connections*

This section should deal with the conditions for connection. It should include details of the application procedures, timeframes for connections and details on where connection pricing information can be obtained. It should also include details of how customers can obtain services where new connections are required, including any quotation process utilised by the retailer.



## *Customer rights*

This section should include a statement of standards and customer rights, including, for example, details of the level of service that customers can expect; billing and payment terms; procedures for reviewing billing disputes; assistance for customers experiencing financial hardship; and processes for registration of life support equipment.

## *Water Retailers' powers*

This section should include a summary of the water retailer's powers, including, for example, the right to enter the customer's property (in certain circumstances); interruptions to service and maintenance of infrastructure (including the methodology used to inform customers about service outages); ability to restrict water services for non-payment of bills; and the power to prohibit the discharge of unauthorised substances into the sewerage system.

## *Availability charges*

This section should inform customers that they may be required to pay a service availability charge, where such charges are permitted under relevant legislation, and the circumstances in which such a charge may be required by the retailer.

## *Enquiries, complaints and dispute resolution*

This section should deal with how customers can make enquiries about their water and/or sewerage services. It should contain contact information including the address, phone number(s), email address(es) and general business hours. It should also explain how customers can obtain emergency assistance and report service outages.

It should also contain details of the retailer's complaints resolution mechanisms, including internal escalation points and any relevant external/independent body that complaints will be referred to in the event the customer and the retailer cannot resolve a particular issue.



The Essential Services Commission of South Australia

Level 1, 151 Pirie Street Adelaide SA 5000

GPO Box 2605 Adelaide SA 5001

08 8463 4444 | [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au) | [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au)

